

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 25

Senator Yuko

**Cosponsors: Senators Brown, Cafaro, Gentile, Sawyer, Schiavoni, Skindell,
Tavares, Thomas, Williams**

A BILL

To amend sections 119.14, 121.083, 1349.61, 1
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 2
4113.15, 4115.03, 4121.01, 4123.01, 4123.026, 3
4141.01, and 5747.01 and to enact sections 4
4175.01, 4175.02, 4175.03, 4175.04, 4175.05, 5
4175.06, 4175.07, 4175.08, 4175.09, 4175.10, 6
4175.11, 4175.12, 4175.13, 4175.14, 4175.15, 7
4175.16, 4175.17, 4175.18, and 4175.99 of the 8
Revised Code to raise the minimum wage; to raise 9
the salary threshold above which certain 10
employees are exempt from the overtime law; and 11
to create a uniform standard to determine 12
whether an individual performing services for an 13
employer is an employee of that employer. 14

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

Section 1. That sections 119.14, 121.083, 1349.61, 15
4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 4115.03, 16
4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 be amended and 17
sections 4175.01, 4175.02, 4175.03, 4175.04, 4175.05, 4175.06, 18

4175.07, 4175.08, 4175.09, 4175.10, 4175.11, 4175.12, 4175.13, 19
4175.14, 4175.15, 4175.16, 4175.17, 4175.18, and 4175.99 of the 20
Revised Code be enacted to read as follows: 21

Sec. 119.14. (A) For any small business that engages in a 22
paperwork violation, the state agency or regulatory authority 23
that regulates the field of operation in which the business 24
operates shall waive any and all administrative fines or civil 25
penalties on that small business for the violation, if the 26
paperwork violation is a first-time offense. 27

(B) When an agency or regulatory authority waives an 28
administrative fine or civil penalty under this section, the 29
state agency or regulatory authority shall require the small 30
business to correct the violation within a reasonable period of 31
time. 32

(C) Notwithstanding this section, a state agency or 33
regulatory authority may impose administrative fines or civil 34
penalties on a small business for a paperwork violation that is 35
a first-time offense for any of the following reasons: 36

(1) The violation has the potential to cause serious harm 37
to the public interest as determined by a state agency or 38
regulatory authority director; 39

(2) The violation involves a small business knowingly or 40
willfully engaging in conduct that may result in a felony 41
conviction; 42

(3) Failure to impose an administrative fine or civil 43
penalty for the violation would impede or interfere with the 44
detection of criminal activity; 45

(4) The violation is of a law concerning the assessment or 46
collection of any tax, debt, revenue, or receipt; 47

(5) The violation presents a direct danger to the public health or safety, results in a financial loss to an employee ~~as defined in section 4111.03 of the Revised Code~~, or presents the risk of severe environmental harm, as determined by the head of the agency or regulatory authority;

(6) The violation is a failure to comply with a federal requirement for a program that has been delegated from the federal government to a state agency or regulatory authority and where the federal requirement includes a requirement to impose a fine.

(D) (1) Nothing in this section shall prohibit a state agency or regulatory authority from waiving administrative fines or civil penalties incurred by a small business for a paperwork violation that is not a first-time offense.

(2) Any administrative fine or civil penalty that is waived under this section, may be reinstated and imposed in addition to any additional fines or penalties associated with a subsequent violation for noncompliance with the same paperwork requirement.

(E) This section shall not apply to any violation by a small business of a statutory or regulatory requirement mandating the collection of information by a state agency or regulatory body if that small business previously violated any such requirement mandating the collection of information.

(F) Nothing in this section shall be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.

(G) As used in this section:	77
(1) "Small business" has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121.	78 79
(2) "Paperwork violation" means the violation of any statutory or regulatory requirement in the Revised Code mandating the collection of information by a state agency or regulatory body.	80 81 82 83
(3) "First-time offense" means the first instance of a violation of the particular statutory or regulatory requirement mandating the collection of information by a state agency or regulatory body.	84 85 86 87
<u>(4) "Employee" means any individual employed by an employer but does not include:</u>	88 89
<u>(a) Any individual employed by the United States;</u>	90
<u>(b) Any individual employed as a babysitter in the employer's home, or a live-in companion to a sick, convalescing, or elderly person whose principal duties do not include housekeeping;</u>	91 92 93 94
<u>(c) Any individual engaged in the delivery of newspapers to the consumer;</u>	95 96
<u>(d) Any individual employed as an outside salesperson compensated by commissions or employed in a bona fide executive, administrative, or professional capacity as such terms are defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended;</u>	97 98 99 100 101
<u>(e) Any individual who works or provides personal services of a charitable nature in a hospital or health institution for which compensation is not sought or contemplated;</u>	102 103 104

(f) A member of a police or fire protection agency or student employed on a part-time or seasonal basis by a political subdivision of this state; 105
106
107

(g) Any individual in the employ of a camp or recreational area for children under eighteen years of age and owned and operated by a nonprofit organization or group of organizations described in section 501(c)(3) of the "Internal Revenue Code of 1954," and exempt from income tax under section 501(a) of that code; 108
109
110
111
112
113

(h) Any individual employed directly by the house of representatives or directly by the senate. 114
115

Sec. 121.083. The superintendent of industrial compliance in the department of commerce shall do all of the following: 116
117

(A) Administer and enforce the general laws of this state pertaining to buildings, pressure piping, boilers, bedding, upholstered furniture, and stuffed toys, steam engineering, elevators, plumbing, licensed occupations regulated by the department, and travel agents, as they apply to plans review, inspection, code enforcement, testing, licensing, registration, and certification. 118
119
120
121
122
123
124

(B) Exercise the powers and perform the duties delegated to the superintendent by the director of commerce under Chapters 4109., 4111., ~~and 4115.~~, and 4175. of the Revised Code. 125
126
127

(C) Collect and collate statistics as are necessary. 128

(D) Examine and license persons who desire to act as steam engineers, to operate steam boilers, and to act as inspectors of steam boilers, provide for the scope, conduct, and time of such examinations, provide for, regulate, and enforce the renewal and revocation of such licenses, inspect and examine steam boilers 129
130
131
132
133

and make, publish, and enforce rules and orders for the 134
construction, installation, inspection, and operation of steam 135
boilers, and do, require, and enforce all things necessary to 136
make such examination, inspection, and requirement efficient. 137

(E) Rent and furnish offices as needed in cities in this 138
state for the conduct of its affairs. 139

(F) Oversee a chief of construction and compliance, a 140
chief of operations and maintenance, a chief of licensing and 141
certification, a chief of worker protection, and other designees 142
appointed by the director to perform the duties described in 143
this section. 144

(G) Enforce the rules the board of building standards 145
adopts pursuant to division (A) (2) of section 4104.43 of the 146
Revised Code under the circumstances described in division (D) 147
of that section. 148

(H) Accept submissions, establish a fee for submissions, 149
and review submissions of certified welding and brazing 150
procedure specifications, procedure qualification records, and 151
performance qualification records for building services piping 152
as required by section 4104.44 of the Revised Code. 153

Sec. 1349.61. (A) (1) Subject to division (C) of this 154
section, no person or entity shall sell a gift card to a 155
purchaser containing an expiration date that is less than two 156
years after the date the gift card is issued. 157

(2) No person or entity, within two years after a gift 158
card is issued, shall charge service charges or fees relative to 159
that gift card, including dormancy fees, latency fees, or 160
administrative fees, that have the effect of reducing the total 161
amount for which the holder of the gift card may redeem the gift 162

card.	163
(B) A gift card sold without an expiration date is valid until redeemed or replaced with a new gift card.	164 165
(C) Division (A) of this section does not apply to any of the following gift cards:	166 167
(1) A gift card that is distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift card by the consumer;	168 169 170 171
(2) A gift card that is sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes, if the expiration date on that gift card is not more than thirty days after the date of sale;	172 173 174 175 176
(3) A gift card that is sold by a nonprofit or charitable organization for fundraising purposes;	177 178
(4) A gift card that an employer gives to an employee if use of the gift card is limited to the employer's business establishment, which may include a group of merchants that are affiliated with that business establishment;	179 180 181 182
(5) A gift certificate issued in accordance with section 1533.131 of the Revised Code that may be used to obtain hunting and fishing licenses, fur taker, special deer, and special wild turkey permits, and wetlands habitat stamps;	183 184 185 186
(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services;	187 188
(7) A gift card that an employer issues to an employee in recognition of services performed by the employee.	189 190

(D) Whoever violates division (A) (2) of this section is 191
liable to the holder for any amount that the redemption value of 192
the gift card was reduced, any court costs incurred, and 193
reasonable attorney's fees. 194

(E) As used in this section: 195

(1) "Gift card" means a certificate, electronic card, or 196
other medium issued by a merchant that evidences the giving of 197
consideration in exchange for the right to redeem the 198
certificate, electronic card, or other medium for goods, food, 199
services, credit, or money of at least an equal value, including 200
any electronic card issued by a merchant with a monetary value 201
where the issuer has received payment for the full monetary 202
value for the future purchase or delivery of goods or services 203
and any certificate issued by a merchant where the issuer has 204
received payment for the full monetary face value of the 205
certificate for the future purchase or delivery of goods and 206
services. "Gift card" does not include a prepaid calling card 207
used to make telephone calls. 208

(2) "Employer" ~~and "employee" have~~ has the same ~~meanings~~ 209
meaning as in section 4121.01 of the Revised Code. 210

(3) "Employee" means every person who may be required or 211
directed by any employer, in consideration of direct or indirect 212
gain or profit, to engage in any employment, or to go, or work, 213
or be at any time in any place of employment. 214

Sec. 4111.02. ~~Every~~ (A) (1) Except as otherwise provided in 215
this chapter, beginning January 1, 2016, every employer, as 216
defined in Section 34a of Article II, Ohio Constitution, shall 217
pay each of the employer's employees at a wage rate of not less 218
than the wage rate specified in Section 34a of Article II, Ohio 219

Constitution or ten dollars and ten cents per hour, whichever is 220
greater. 221

(2) If an employer is able to demonstrate that an employee 222
receives tips that combined with the wages paid by the employer 223
are equal to or greater than the minimum wage rate for all hours 224
worked, the employer may pay the employee at a rate of less 225
than, but not less than half, the minimum wage rate required by 226
division (A)(1) of this section. 227

(3) An employer may pay an employee a wage rate not less 228
than the wage rate established under the federal "Fair Labor 229
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201 et seq., as 230
amended, or its successor law if either of the following 231
applies: 232

(a) The employer, as of January 1, 2015, had gross annual 233
receipts of two hundred ninety-seven thousand dollars or less. 234

(b) The employee is less than sixteen years of age. 235

(B) The director of commerce annually shall adjust the 236
wage rate as rates specified in division (A)(1) of this section 237
and the gross annual receipt amount specified in division (A)(3) 238
of this section in accordance with Section 34a of Article II, 239
Ohio Constitution. 240

(C) As used in this section, "employee" has the same 241
meaning as in section 4111.14 of the Revised Code. 242

Sec. 4111.03. (A) An employer shall pay an employee for 243
overtime at a wage rate of one and one-half times the employee's 244
wage rate for hours worked in excess of forty hours in one 245
workweek, in the manner and methods provided in and, except as 246
otherwise provided in division (D) of this section, subject to 247
the exemptions of section 7 and section 13 of the "Fair Labor 248

Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 249
amended. 250

Any employee employed in agriculture shall not be covered 251
by the overtime provision of this section. 252

(B) If a county employee elects to take compensatory time 253
off in lieu of overtime pay, for any overtime worked, 254
compensatory time may be granted by the employee's 255
administrative superior, on a time and one-half basis, at a time 256
mutually convenient to the employee and the administrative 257
superior within one hundred eighty days after the overtime is 258
worked. 259

(C) A county appointing authority with the exception of 260
the county department of job and family services may, by rule or 261
resolution as is appropriate, indicate the authority's intention 262
not to be bound by division (B) of this section, and to adopt a 263
different policy for the calculation and payment of overtime 264
than that established by that division. Upon adoption, the 265
alternative overtime policy prevails. Prior to the adoption of 266
an alternative overtime policy, a county appointing authority 267
with the exception of the county department of job and family 268
services shall give a written notice of the alternative policy 269
to each employee at least ten days prior to its effective date. 270

(D) As used in this section: 271

(1) "Employ" means to suffer or to permit to work. 272

(2) "Employer" means the state of Ohio, its 273
instrumentalities, and its political subdivisions and their 274
instrumentalities, any individual, partnership, association, 275
corporation, business trust, or any person or group of persons, 276
acting in the interest of an employer in relation to an 277

employee, but does not include an employer whose annual gross 278
volume of sales made for business done is less than one hundred 279
fifty thousand dollars, exclusive of excise taxes at the retail 280
level which are separately stated. 281

(3) "Employee" means any individual employed by an 282
employer but does not include: 283

(a) Any individual employed by the United States; 284

(b) Any individual employed as a baby-sitter in the 285
employer's home, or a live-in companion to a sick, convalescing, 286
or elderly person whose principal duties do not include 287
housekeeping; 288

(c) Any individual engaged in the delivery of newspapers 289
to the consumer; 290

(d) Any individual employed as an outside salesperson 291
compensated by commissions ~~or~~; 292

(e) Any individual who is employed in a bona fide 293
executive, administrative, or professional capacity as such 294
terms are defined by the "Fair Labor Standards Act of 1938," 52 295
Stat. 1060, 29 U.S.C.A. 201, as amended, and who is compensated 296
on a salary basis of at least the following amounts: 297

(i) For the time period beginning January 1, 2016, and 298
ending December 31, 2016, fifty thousand dollars per year; 299

(ii) Beginning on and after January 1, 2017, sixty-nine 300
thousand dollars per year. 301

~~(e)~~ (f) Any individual who works or provides personal 302
services of a charitable nature in a hospital or health 303
institution for which compensation is not sought or 304
contemplated; 305

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

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

~~(h)~~(i) Any individual employed directly by the house of representatives or directly by the senate.

Sec. 4111.09. Every employer subject to sections 4111.01 to 4111.17 of the Revised Code, or to any rules issued thereunder, shall keep a summary of the sections, approved by the director of commerce, and copies of any applicable rules issued thereunder, or a summary of the rules, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. The director of commerce shall make the summary described in this section available on the web site of the department of commerce. The director shall update this summary as necessary, but not less than annually, in order to reflect changes in the minimum wage rate as required under Section 34a of Article II, Ohio Constitution and section 4111.02 of the Revised Code. Employees and employers shall be furnished copies of the summaries and rules by the state, on request, without charge.

Sec. 4111.13. (A) No employer shall hinder or delay the director of commerce in the performance of the director's duties in the enforcement of sections 4111.01 to 4111.17 of the Revised Code, or refuse to admit the director to any place of

employment, or fail to make, keep, and preserve any records as 336
required under those sections, or falsify any of those records, 337
or refuse to make them accessible to the director upon demand, 338
or refuse to furnish them or any other information required for 339
the proper enforcement of those sections to the director upon 340
demand, or fail to post a summary of those sections or a copy of 341
any applicable rules as required by section 4111.09 of the 342
Revised Code. Each day of violation constitutes a separate 343
offense. 344

(B) No employer shall discharge or in any other manner 345
discriminate against any employee because the employee has made 346
any complaint to the employee's employer, or to the director, 347
that the employee has not been paid wages in accordance with 348
sections 4111.01 to 4111.17 of the Revised Code, or because the 349
employee has made any complaint or is about to cause to be 350
instituted any proceeding under or related to those sections, or 351
because the employee has testified or is about to testify in any 352
proceeding. 353

(C) No employer shall recklessly pay or agree to pay wages 354
at a rate less than the rate applicable under sections 4111.01 355
to 4111.17 of the Revised Code or recklessly fail to pay 356
overtime as required by those sections. Each week or portion 357
thereof for which the employer pays any employee less than the 358
rate applicable under those sections constitutes a separate 359
offense as to each employer. 360

(D) No employer shall otherwise violate sections 4111.01 361
to 4111.17 of the Revised Code, or any rule adopted thereunder. 362
Each day of violation constitutes a separate offense. 363

Sec. 4111.14. (A) Pursuant to the general assembly's 364
authority to establish a minimum wage under Section 34 of 365

Article II, Ohio Constitution, this section is in implementation 366
of Section 34a of Article II, Ohio Constitution. In implementing 367
Section 34a of Article II, Ohio Constitution, the general 368
assembly hereby finds that the purpose of Section 34a of Article 369
II, Ohio Constitution, is to: 370

(1) Ensure that Ohio employees, as defined in division (B) 371
(1) of this section, are paid the wage rate required by section 372
4111.02 of the Revised Code in accordance with Section 34a of 373
Article II, Ohio Constitution; 374

(2) Ensure that covered Ohio employers maintain certain 375
records that are directly related to the enforcement of the wage 376
rate requirements in of Section 34a of Article II, Ohio 377
Constitution and section 4111.02 of the Revised Code; 378

(3) Ensure that Ohio employees who are paid the wage rate 379
required by Section 34a of Article II, Ohio Constitution section 380
4111.02 of the Revised Code, may enforce their right to receive 381
that wage rate in the manner set forth in Section 34a of Article 382
II, Ohio Constitution; and 383

(4) Protect the privacy of Ohio employees' pay and 384
personal information specified in Section 34a of Article II, 385
Ohio Constitution, by restricting an employee's access, and 386
access by a person acting on behalf of that employee, to the 387
employee's own pay and personal information. 388

(B) In accordance with Section 34a of Article II, Ohio 389
Constitution, the terms "employer," ~~"employee,"~~ "employ," and 390
~~"person,"~~ and ~~"independent contractor"~~ have the same meanings as 391
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 392
U.S.C. 203, as amended. In construing the meaning of these 393
terms, due consideration and great weight shall be given to the 394

United States department of labor's and federal courts' 395
interpretations of those terms under the Fair Labor Standards 396
Act and its regulations. As used in division (B) of this 397
section: 398

~~(1) "Employee" means individuals employed in Ohio, but 399
does not mean individuals who are excluded from the definition 400
of "employee" under 29 U.S.C. 203(c) or individuals who are 401
exempted from the minimum wage requirements in 29 U.S.C. 213 and 402
from the definition of "employee" in this chapter. 403~~

~~(2) "Employ" and "employee" do not include any person 404
acting as a volunteer. In construing who is a volunteer, 405
"volunteer" shall have the same meaning as in sections 553.101- 406
to 553.106 of Title 29 of the Code of Federal Regulations, as 407
amended, and due consideration and great weight shall be given 408
to the United States department of labor's and federal courts' 409
interpretations of the term "volunteer" under the Fair Labor 410
Standards Act and its regulations, "employee" has the same 411
meaning as in section 4175.01 of the Revised Code. 412~~

(C) In accordance with Section 34a of Article II, Ohio 413
Constitution, the state may issue licenses to employers 414
authorizing payment of a wage below that required by Section 34a 415
of Article II, Ohio Constitution, or section 4111.02 of the 416
Revised Code to individuals with mental or physical disabilities 417
that may otherwise adversely affect their opportunity for 418
employment. In issuing such licenses, the state shall abide by 419
the rules adopted pursuant to section 4111.06 of the Revised 420
Code. 421

(D) (1) In accordance with Section 34a of Article II, Ohio 422
Constitution, individuals employed in or about the property of 423
an employer or an individual's residence on a casual basis are 424

not included within the coverage of Section 34a of Article II, 425
Ohio Constitution. As used in division (D) of this section: 426

(a) "Casual basis" means employment that is irregular or 427
intermittent and that is not performed by an individual whose 428
vocation is to be employed in or about the property of the 429
employer or individual's residence. In construing who is 430
employed on a "casual basis," due consideration and great weight 431
shall be given to the United States department of labor's and 432
federal courts' interpretations of the term "casual basis" under 433
the Fair Labor Standards Act and its regulations. 434

(b) "An individual employed in or about the property of an 435
employer or individual's residence" means an individual employed 436
on a casual basis or an individual employed in or about a 437
residence on a casual basis, respectively. 438

(2) In accordance with Section 34a of Article II, Ohio 439
Constitution, employees of a solely family-owned and operated 440
business who are family members of an owner are not included 441
within the coverage of Section 34a of Article II, Ohio 442
Constitution. As used in division (D)(2) of this section, 443
"family member" means a parent, spouse, child, stepchild, 444
sibling, grandparent, grandchild, or other member of an owner's 445
immediate family. 446

(E) In accordance with Section 34a of Article II, Ohio 447
Constitution, an employer shall at the time of hire provide an 448
employee with the employer's name, address, telephone number, 449
and other contact information and update such information when 450
it changes. As used in division (E) of this section: 451

(1) "Other contact information" may include, where 452
applicable, the address of the employer's internet site on the 453

world wide web, the employer's electronic mail address, fax 454
number, or the name, address, and telephone number of the 455
employer's statutory agent. "Other contact information" does not 456
include the name, address, telephone number, fax number, 457
internet site address, or electronic mail address of any 458
employee, shareholder, officer, director, supervisor, manager, 459
or other individual employed by or associated with an employer. 460

(2) "When it changes" means that the employer shall 461
provide its employees with the change in its name, address, 462
telephone number, or other contact information within sixty 463
business days after the change occurs. The employer shall 464
provide the changed information by using any of its usual 465
methods of communicating with its employees, including, but not 466
limited to, listing the change on the employer's internet site 467
on the world wide web, internal computer network, or a bulletin 468
board where it commonly posts employee communications or by 469
insertion or inclusion with employees' paychecks or pay stubs. 470

(F) In accordance with Section 34a of Article II, Ohio 471
Constitution, an employer shall maintain a record of the name, 472
address, occupation, pay rate, hours worked for each day worked, 473
and each amount paid an employee for a period of not less than 474
three years following the last date the employee was employed by 475
that employer. As used in division (F) of this section: 476

(1) "Address" means an employee's home address as 477
maintained in the employer's personnel file or personnel 478
database for that employee. 479

(2) (a) With respect to employees who are not exempt from 480
the overtime pay requirements of the Fair Labor Standards Act or 481
this chapter, "pay rate" means an employee's base rate of pay. 482

(b) With respect to employees who are exempt from the 483
overtime pay requirements of the Fair Labor Standards Act or 484
this chapter, "pay rate" means an employee's annual base salary 485
or other rate of pay by which the particular employee qualifies 486
for that exemption under the Fair Labor Standards Act or this 487
chapter, but does not include bonuses, stock options, 488
incentives, deferred compensation, or any other similar form of 489
compensation. 490

(3) "Record" means the name, address, occupation, pay 491
rate, hours worked for each day worked, and each amount paid an 492
employee in one or more documents, databases, or other paper or 493
electronic forms of record-keeping maintained by an employer. No 494
one particular method or form of maintaining such a record or 495
records is required under this division. An employer is not 496
required to create or maintain a single record containing only 497
the employee's name, address, occupation, pay rate, hours worked 498
for each day worked, and each amount paid an employee. An 499
employer shall maintain a record or records from which the 500
employee or person acting on behalf of that employee could 501
reasonably review the information requested by the employee or 502
person. 503

An employer is not required to maintain the records 504
specified in division (F) (3) of this section for any period 505
before January 1, 2007. On and after January 1, 2007, the 506
employer shall maintain the records required by division (F) (3) 507
of this section for three years from the date the hours were 508
worked by the employee and for three years after the date the 509
employee's employment ends. 510

(4) (a) Except for individuals specified in division (F) (4) 511
(b) of this section, "hours worked for each day worked" means 512

the total amount of time worked by an employee in whatever 513
increments the employer uses for its payroll purposes during a 514
day worked by the employee. An employer is not required to keep 515
a record of the time of day an employee begins and ends work on 516
any given day. As used in division (F) (4) of this section, "day" 517
means a fixed period of twenty-four consecutive hours during 518
which an employee performs work for an employer. 519

(b) An employer is not required to keep records of "hours 520
worked for each day worked" for individuals for whom the 521
employer is not required to keep those records under the Fair 522
Labor Standards Act and its regulations or individuals who are 523
not subject to the overtime pay requirements specified in 524
section 4111.03 of the Revised Code. 525

(5) "Each amount paid an employee" means the total gross 526
wages paid to an employee for each pay period. As used in 527
division (F) (5) of this section, "pay period" means the period 528
of time designated by an employer to pay an employee the 529
employee's gross wages in accordance with the employer's payroll 530
practices under section 4113.15 of the Revised Code. 531

(G) In accordance with Section 34a of Article II, Ohio 532
Constitution, an employer must provide such information without 533
charge to an employee or person acting on behalf of an employee 534
upon request. As used in division (G) of this section: 535

(1) "Such information" means the name, address, 536
occupation, pay rate, hours worked for each day worked, and each 537
amount paid for the specific employee who has requested that 538
specific employee's own information and does not include the 539
name, address, occupation, pay rate, hours worked for each day 540
worked, or each amount paid of any other employee of the 541
employer. "Such information" does not include hours worked for 542

each day worked by individuals for whom an employer is not 543
required to keep that information under the Fair Labor Standards 544
Act and its regulations or individuals who are not subject to 545
the overtime pay requirements specified in section 4111.03 of 546
the Revised Code. 547

(2) "Acting on behalf of an employee" means a person 548
acting on behalf of an employee as any of the following: 549

(a) The certified or legally recognized collective 550
bargaining representative for that employee under the applicable 551
federal law or Chapter 4117. of the Revised Code; 552

(b) The employee's attorney; 553

(c) The employee's parent, guardian, or legal custodian. 554

A person "acting on behalf of an employee" must be 555
specifically authorized by an employee in order to make a 556
request for that employee's own name, address, occupation, pay 557
rate, hours worked for each day worked, and each amount paid to 558
that employee. 559

(3) "Provide" means that an employer shall provide the 560
requested information within thirty business days after the date 561
the employer receives the request, unless either of the 562
following occurs: 563

(a) The employer and the employee or person acting on 564
behalf of the employee agree to some alternative time period for 565
providing the information. 566

(b) The thirty-day period would cause a hardship on the 567
employer under the circumstances, in which case the employer 568
must provide the requested information as soon as practicable. 569

(4) A "request" made by an employee or a person acting on 570

behalf of an employee means a request by an employee or a person 571
acting on behalf of an employee for the employee's own 572
information. The employer may require that the employee provide 573
the employer with a written request that has been signed by the 574
employee and notarized and that reasonably specifies the 575
particular information being requested. The employer may require 576
that the person acting on behalf of an employee provide the 577
employer with a written request that has been signed by the 578
employee whose information is being requested and notarized and 579
that reasonably specifies the particular information being 580
requested. 581

(H) In accordance with Section 34a of Article II, Ohio 582
Constitution, an employee, person acting on behalf of one or 583
more employees, and any other interested party may file a 584
complaint with the state for a violation of any provision of 585
Section 34a of Article II, Ohio Constitution, or any law or 586
regulation implementing its provisions. Such complaint shall be 587
promptly investigated and resolved by the state. The employee's 588
name shall be kept confidential unless disclosure is necessary 589
to resolution of a complaint and the employee consents to 590
disclosure. As used in division (H) of this section: 591

(1) "Complaint" means a complaint of an alleged violation 592
pertaining to harm suffered by the employee filing the 593
complaint, by a person acting on behalf of one or more 594
employees, or by an interested party. 595

(2) "Acting on behalf of one or more employees" has the 596
same meaning as "acting on behalf of an employee" in division 597
(G) (2) of this section. Each employee must provide a separate 598
written and notarized authorization before the person acting on 599
that employee's or those employees' behalf may request the name, 600

address, occupation, pay rate, hours worked for each day worked, 601
and each amount paid for the particular employee. 602

(3) "Interested party" means a party who alleges to be 603
injured by the alleged violation and who has standing to file a 604
complaint under common law principles of standing. 605

(4) "Resolved by the state" means that the complaint has 606
been resolved to the satisfaction of the state. 607

(5) "Shall be kept confidential" means that the state 608
shall keep the name of the employee confidential as required by 609
division (H) of this section. 610

(I) In accordance with Section 34a of Article II, Ohio 611
Constitution, the state may on its own initiative investigate an 612
employer's compliance with Section 34a of Article II, Ohio 613
Constitution, and any law or regulation implementing Section 34a 614
of Article II, Ohio Constitution. The employer shall make 615
available to the state any records related to such investigation 616
and other information required for enforcement of Section 34a of 617
Article II, Ohio Constitution or any law or regulation 618
implementing Section 34a of Article II, Ohio Constitution. The 619
state shall investigate an employer's compliance with this 620
section in accordance with the procedures described in section 621
4111.04 of the Revised Code. All records and information related 622
to investigations by the state are confidential and are not a 623
public record subject to section 149.43 of the Revised Code. 624
This division does not prevent the state from releasing to or 625
exchanging with other state and federal wage and hour regulatory 626
authorities information related to investigations. 627

(J) In accordance with Section 34a of Article II, Ohio 628
Constitution, damages shall be calculated as an additional two 629

times the amount of the back wages and in the case of a 630
violation of an anti-retaliation provision an amount set by the 631
state or court sufficient to compensate the employee and deter 632
future violations, but not less than one hundred fifty dollars 633
for each day that the violation continued. The "not less than 634
one hundred fifty dollar" penalty specified in division (J) of 635
this section shall be imposed only for violations of the anti- 636
retaliation provision in Section 34a of Article II, Ohio 637
Constitution. 638

(K) In accordance with Section 34a of Article II, Ohio 639
Constitution, an action for equitable and monetary relief may be 640
brought against an employer by the attorney general and/or an 641
employee or person acting on behalf of an employee or all 642
similarly situated employees in any court of competent 643
jurisdiction, including the court of common pleas of an 644
employee's county of residence, for any violation of Section 34a 645
of Article II, Ohio Constitution, or any law or regulation 646
implementing its provisions within three years of the violation 647
or of when the violation ceased if it was of a continuing 648
nature, or within one year after notification to the employee of 649
final disposition by the state of a complaint for the same 650
violation, whichever is later. 651

(1) As used in division (K) of this section, 652
"notification" means the date on which the notice was sent to 653
the employee by the state. 654

(2) No employee shall join as a party plaintiff in any 655
civil action that is brought under division (K) of this section 656
by an employee, person acting on behalf of an employee, or 657
person acting on behalf of all similarly situated employees 658
unless that employee first gives written consent to become such 659

a party plaintiff and that consent is filed with the court in 660
which the action is brought. 661

(3) A civil action regarding an alleged violation of this 662
section shall be maintained only under division (K) of this 663
section. This division does not preclude the joinder in a single 664
civil action of an action under this division and an action 665
under section 4111.10 of the Revised Code. 666

(4) Any agreement between an employee and employer to work 667
for less than the wage rate specified in ~~Section 34a of Article~~ 668
~~II, Ohio Constitution~~ section 4111.02 of the Revised Code, is no 669
defense to an action under this section. 670

(L) In accordance with Section 34a of Article II, Ohio 671
Constitution, there shall be no exhaustion requirement, no 672
procedural, pleading, or burden of proof requirements beyond 673
those that apply generally to civil suits in order to maintain 674
such action and no liability for costs or attorney's fees on an 675
employee except upon a finding that such action was frivolous in 676
accordance with the same standards that apply generally in civil 677
suits. Nothing in division (L) of this section affects the right 678
of an employer and employee to agree to submit a dispute under 679
this section to alternative dispute resolution, including, but 680
not limited to, arbitration, in lieu of maintaining the civil 681
suit specified in division (K) of this section. Nothing in this 682
division limits the state's ability to investigate or enforce 683
this section. 684

(M) An employer who provides such information specified in 685
Section 34a of Article II, Ohio Constitution, shall be immune 686
from any civil liability for injury, death, or loss to person or 687
property that otherwise might be incurred or imposed as a result 688
of providing that information to an employee or person acting on 689

behalf of an employee in response to a request by the employee 690
or person, and the employer shall not be subject to the 691
provisions of Chapters 1347. and 1349. of the Revised Code to 692
the extent that such provisions would otherwise apply. As used 693
in division (M) of this section, "such information," "acting on 694
behalf of an employee," and "request" have the same meanings as 695
in division (G) of this section. 696

(N) As used in this section, "the state" means the 697
director of commerce. 698

Sec. 4113.15. (A) Every individual, firm, partnership, 699
association, or corporation doing business in this state shall, 700
on or before the first day of each month, pay all its employees 701
the wages earned by them during the first half of the preceding 702
month ending with the fifteenth day thereof, and shall, on or 703
before the fifteenth day of each month, pay such employees the 704
wages earned by them during the last half of the preceding 705
calendar month. If at any time of payment an employee is absent 706
from ~~his~~ the employee's regular place of labor and does not 707
receive ~~his~~ payment of wages through an authorized 708
representative, such person shall be entitled to said payment at 709
any time thereafter upon demand upon the proper paymaster at the 710
place where such wages are usually paid and where such pay is 711
due. This section does not prohibit the daily or weekly payment 712
of wages. ~~The~~ or the use of a longer time lapse that is 713
customary to a given trade, profession or occupation, or 714
establishment of a different time lapse by written contract or 715
by operation of law. 716

(B) Where wages remain unpaid for thirty days beyond the 717
regularly scheduled payday or, in the case where no regularly 718
scheduled payday is applicable, for sixty days beyond the filing 719

by the employee of a claim or for sixty days beyond the date of 720
the agreement, award, or other act making wages payable and no 721
contest court order or dispute of any wage claim including the 722
assertion of a counterclaim exists accounting for nonpayment, 723
the employer, in addition, as liquidated damages, is liable to 724
the employee in an amount equal to six per cent of the amount of 725
the claim still unpaid and not in contest or disputed or two 726
hundred dollars, whichever is greater. 727

(C) In the absence of a contest, court order or dispute, 728
an employer who is party to an agreement to pay or provide 729
fringe benefits to an employee or to make any employee 730
authorized deduction becomes a trustee of any funds required by 731
such agreement to be paid to any person, organization, or 732
governmental agency from the time that the duty to make such 733
payment arises. No person shall, without reasonable 734
justification or excuse for such failure, knowingly fail or 735
refuse to pay to the appropriate person, organization, or 736
governmental agency the amount necessary to provide the benefits 737
or accomplish the purpose of any employee authorized deduction, 738
within thirty days after the close of the pay period during 739
which the employee earned or had deducted the amount of money 740
necessary to pay for the fringe benefit or make any employee 741
authorized deduction. A failure or refusal to pay, regardless of 742
the number of employee pay accounts involved, constitutes one 743
offense for the first delinquency of thirty days and a separate 744
offense for each successive delinquency of thirty days. 745

(D) As used in this section and section 4113.16 of the 746
Revised Code: 747

(1) "Wage" means the net amount of money payable to an 748
employee, including any guaranteed pay or reimbursement for 749

expenses, less any federal, state, or local taxes withheld; any 750
deductions made pursuant to a written agreement for the purpose 751
of providing the employee with any fringe benefits; and any 752
employee authorized deduction. 753

(2) "Fringe benefits" includes but is not limited to 754
health, welfare, or retirement benefits, whether paid for 755
entirely by the employer or on the basis of a joint employer- 756
employee contribution, or vacation, separation, or holiday pay. 757

(3) "Employee authorized deduction" includes but is not 758
limited to deductions for the purpose of any of the following: 759
~~(a) purchase~~ 760

(a) Purchase of United States savings bonds or corporate 761
stocks or bonds, ~~(b) a~~; 762

(b) A charitable contribution, ~~(c) credit~~; 763

(c) Credit union savings or other regular savings program, ~~—~~ 764
~~or (d) repayment~~; 765

(d) Repayment of a loan or other obligation. 766

(4) "Employee" has the same meaning as in section 4175.01 767
of the Revised Code. 768

Sec. 4115.03. As used in sections 4115.03 to 4115.16 of 769
the Revised Code: 770

(A) "Public authority" means any officer, board, or 771
commission of the state, or any political subdivision of the 772
state, authorized to enter into a contract for the construction 773
of a public improvement or to construct the same by the direct 774
employment of labor, or any institution supported in whole or in 775
part by public funds and said sections apply to expenditures of 776
such institutions made in whole or in part from public funds. 777

(B) "Construction" means any of the following: 778

(1) Except as provided in division (B)(3) of this section, 779
any new construction of a public improvement, the total overall 780
project cost of which is fairly estimated to be more than the 781
following amounts and performed by other than full-time 782
employees who have completed their probationary periods in the 783
classified service of a public authority: 784

(a) One hundred twenty-five thousand dollars, beginning on 785
~~the effective date of this amendment~~ September 29, 2011, and 786
continuing for one year thereafter; 787

(b) Two hundred thousand dollars, beginning when the time 788
period described in division (B)(1)(a) of this section expires 789
and continuing for one year thereafter; 790

(c) Two hundred fifty thousand dollars, beginning when the 791
time period described in division (B)(1)(b) of this section 792
expires. 793

(2) Except as provided in division (B)(4) of this section, 794
any reconstruction, enlargement, alteration, repair, remodeling, 795
renovation, or painting of a public improvement, the total 796
overall project cost of which is fairly estimated to be more 797
than the following amounts and performed by other than full-time 798
employees who have completed their probationary period in the 799
classified civil service of a public authority: 800

(a) Thirty-eight thousand dollars, beginning on ~~the~~ 801
~~effective date of this amendment~~ September 29, 2011, and 802
continuing for one year thereafter; 803

(b) Sixty thousand dollars, beginning when the time period 804
described in division (B)(2)(a) of this section expires and 805
continuing for one year thereafter; 806

(c) Seventy-five thousand dollars, beginning when the time 807
period described in division (B) (2) (b) of this section expires. 808

(3) Any new construction of a public improvement that 809
involves roads, streets, alleys, sewers, ditches, and other 810
works connected to road or bridge construction, the total 811
overall project cost of which is fairly estimated to be more 812
than seventy-eight thousand two hundred fifty-eight dollars 813
adjusted biennially by the director of commerce pursuant to 814
section 4115.034 of the Revised Code and performed by other than 815
full-time employees who have completed their probationary 816
periods in the classified service of a public authority; 817

(4) Any reconstruction, enlargement, alteration, repair, 818
remodeling, renovation, or painting of a public improvement that 819
involves roads, streets, alleys, sewers, ditches, and other 820
works connected to road or bridge construction, the total 821
overall project cost of which is fairly estimated to be more 822
than twenty-three thousand four hundred forty-seven dollars 823
adjusted biennially by the director of commerce pursuant to 824
section 4115.034 of the Revised ~~code~~ Code and performed by other 825
than full-time employees who have completed their probationary 826
periods in the classified service of a public authority. 827

(C) "Public improvement" includes all buildings, roads, 828
streets, alleys, sewers, ditches, sewage disposal plants, water 829
works, and all other structures or works constructed by a public 830
authority of the state or any political subdivision thereof or 831
by any person who, pursuant to a contract with a public 832
authority, constructs any structure for a public authority of 833
the state or a political subdivision thereof. When a public 834
authority rents or leases a newly constructed structure within 835
six months after completion of such construction, all work 836

performed on such structure to suit it for occupancy by a public authority is a "public improvement." "Public improvement" does not include an improvement authorized by section 1515.08 of the Revised Code that is constructed pursuant to a contract with a soil and water conservation district, as defined in section 1515.01 of the Revised Code, or performed as a result of a petition filed pursuant to Chapter 6131., 6133., or 6135. of the Revised Code, wherein no less than seventy-five per cent of the project is located on private land and no less than seventy-five per cent of the cost of the improvement is paid for by private property owners pursuant to Chapter 1515., 6131., 6133., or 6135. of the Revised Code.

(D) "Locality" means the county wherein the physical work upon any public improvement is being performed.

(E) "Prevailing wages" means the sum of the following:

(1) The basic hourly rate of pay;

(2) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program;

(3) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing the following fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected:

(a) Medical or hospital care or insurance to provide such;

(b) Pensions on retirement or death or insurance to provide such;

(c) Compensation for injuries or illnesses resulting from occupational activities if it is in addition to that coverage required by Chapters 4121. and 4123. of the Revised Code;	865 866 867
(d) Supplemental unemployment benefits that are in addition to those required by Chapter 4141. of the Revised Code;	868 869
(e) Life insurance;	870
(f) Disability and sickness insurance;	871
(g) Accident insurance;	872
(h) Vacation and holiday pay;	873
(i) Defraying of costs for apprenticeship or other similar training programs which are beneficial only to the laborers and mechanics affected;	874 875 876
(j) Other bona fide fringe benefits.	877
None of the benefits enumerated in division (E) (3) of this section may be considered in the determination of prevailing wages if federal, state, or local law requires contractors or subcontractors to provide any of such benefits.	878 879 880 881
(F) "Interested party," with respect to a particular contract for construction of a public improvement, means:	882 883
(1) Any person who submits a bid for the purpose of securing the award of the contract;	884 885
(2) Any person acting as a subcontractor of a person described in division (F) (1) of this section;	886 887
(3) Any bona fide organization of labor which has as members or is authorized to represent employees of a person described in division (F) (1) or (2) of this section and which exists, in whole or in part, for the purpose of negotiating with	888 889 890 891

employers concerning the wages, hours, or terms and conditions 892
of employment of employees; 893

(4) Any association having as members any of the persons 894
described in division (F) (1) or (2) of this section. 895

(G) Except as used in division (A) of this section, 896
"officer" means an individual who has an ownership interest or 897
holds an office of trust, command, or authority in a 898
corporation, business trust, partnership, or association. 899

(H) "Employee" has the same meaning as in section 4175.01 900
of the Revised Code. 901

Sec. 4121.01. (A) As used in sections 4121.01 to 4121.29 902
of the Revised Code: 903

(1) "Place of employment" means every place, whether 904
indoors or out, or underground, and the premises appurtenant 905
thereto, where either temporarily or permanently any industry, 906
trade, or business is carried on, or where any process or 907
operation, directly or indirectly related to any industry, 908
trade, or business, is carried on and where any person is 909
directly or indirectly employed by another for direct or 910
indirect gain or profit, but does not include any place where 911
persons are employed in private domestic service or agricultural 912
pursuits which do not involve the use of mechanical power. 913

(2) "Employment" means any trade, occupation, or process 914
of manufacture or any method of carrying on such trade, 915
occupation, or process of manufacture in which any person may be 916
engaged, except in such private domestic service or agricultural 917
pursuits as do not involve the use of mechanical power. 918

(3) "Employer" means every person, firm, corporation, 919
agent, manager, representative, or other person having control 920

or custody of any employment, place of employment, or employee. 921

(4) ~~"Employee" means every person who may be required or~~ 922
~~directed by any employer, in consideration of direct or indirect~~ 923
~~gain or profit, to engage in any employment, or to go, or work,~~ 924
~~or be at any time in any place of employment~~ has the same 925
meaning as in section 4175.01 of the Revised Code. 926

(5) "Frequenter" means every person, other than an 927
employee, who may go in or be in a place of employment under 928
circumstances which render the person other than a trespasser. 929

(6) "Deputy" means any person employed by the industrial 930
commission or the bureau of workers' compensation, designated as 931
a deputy by the commission or the administrator of workers' 932
compensation, who possesses special, technical, scientific, 933
managerial, professional, or personal abilities or qualities in 934
matters within the jurisdiction of the commission or the bureau, 935
and who may be engaged in the performance of duties under the 936
direction of the commission or the bureau calling for the 937
exercise of such abilities or qualities. 938

(7) "Order" means any decision, rule, regulation, 939
direction, requirement, or standard, or any other determination 940
or decision that the bureau is empowered to and does make. 941

(8) "General order" means an order that applies generally 942
throughout the state to all persons, employments, or places of 943
employment, or all persons, employments, or places of employment 944
of a class under the jurisdiction of the bureau. All other 945
orders shall be considered special orders. 946

(9) "Local order" means any ordinance, order, rule, or 947
determination of the legislative authority of any municipal 948
corporation, or any trustees, or board or officers of any 949

municipal corporation upon any matter over which the bureau has jurisdiction. 950
951

(10) "Welfare" means comfort, decency, and moral well-being. 952
953

(11) "Safe" or "safety," as applied to any employment or a place of employment, means such freedom from danger to the life, health, safety, or welfare of employees or frequenters as the nature of the employment will reasonably permit, including requirements as to the hours of labor with relation to the health and welfare of employees. 954
955
956
957
958
959

(12) "Employee organization" means any labor or bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment. 960
961
962
963
964

(B) As used in the Revised Code: 965

(1) "Industrial commission" means the chairperson of the three-member industrial commission created pursuant to section 4121.02 of the Revised Code when the context refers to the authority vested in the chairperson as the chief executive officer of the three-member industrial commission pursuant to divisions (A), (B), (C), and (D) of section 4121.03 of the Revised Code. 966
967
968
969
970
971
972

(2) "Industrial commission" means the three-member industrial commission created pursuant to section 4121.02 of the Revised Code when the context refers to the authority vested in the three-member industrial commission pursuant to division (E) of section 4121.03 of the Revised Code. 973
974
975
976
977

(3) "Industrial commission" means the industrial 978

commission as a state agency when the context refers to the 979
authority vested in the industrial commission as a state agency. 980

Sec. 4123.01. As used in this chapter: 981

(A) (1) "Employee" ~~means:~~ 982

~~(a) Every person in the service of the state, or of any 983
county, municipal corporation, township, or school district 984
therein, including regular members of lawfully constituted 985
police and fire departments of municipal corporations and 986
townships, whether paid or volunteer, and wherever serving 987
within the state or on temporary assignment outside thereof, and 988
executive officers of boards of education, under any appointment 989
or contract of hire, express or implied, oral or written, 990
including any elected official of the state, or of any county, 991
municipal corporation, or township, or members of boards of 992
education. 993~~

~~As used in division (A) (1) (a) of this section, the term 994
"employee" has the same meaning as in section 4175.01 of the 995
Revised Code, except that "employee" also includes the following 996
persons when responding to an inherently dangerous situation 997
that calls for an immediate response on the part of the person, 998
regardless of whether the person is within the limits of the 999
jurisdiction of the person's regular employment or voluntary 1000
service when responding, on the condition that the person 1001
responds to the situation as the person otherwise would if the 1002
person were on duty in the person's jurisdiction: 1003~~

~~(i) (a) Off-duty peace officers. As used in division (A) 1004
(1) (a) (i) of this section, "peace officer" has the same meaning 1005
as in section 2935.01 of the Revised Code. 1006~~

~~(ii) (b) Off-duty firefighters, whether paid or volunteer, 1007~~

of a lawfully constituted fire department. 1008

~~(iii) (c) Off-duty first responders, emergency medical 1009
technicians-basic, emergency medical technicians-intermediate, 1010
or emergency medical technicians-paramedic, whether paid or 1011
volunteer, of an ambulance service organization or emergency 1012
medical service organization pursuant to Chapter 4765. of the 1013
Revised Code. 1014~~

~~(b) Every person in the service of any person, firm, or 1015
private corporation, including any public service corporation, 1016
that (i) employs one or more persons regularly in the same 1017
business or in or about the same establishment under any 1018
contract of hire, express or implied, oral or written, including 1019
aliens and minors, household workers who earn one hundred sixty 1020
dollars or more in cash in any calendar quarter from a single 1021
household and casual workers who earn one hundred sixty dollars 1022
or more in cash in any calendar quarter from a single employer, 1023
or (ii) is bound by any such contract of hire or by any other 1024
written contract, to pay into the state insurance fund the 1025
premiums provided by this chapter. 1026~~

~~(c) Every person who performs labor or provides services 1027
pursuant to a construction contract, as defined in section 1028
4123.79 of the Revised Code, if at least ten of the following 1029
criteria apply: 1030~~

~~(i) The person is required to comply with instructions 1031
from the other contracting party regarding the manner or method 1032
of performing services; 1033~~

~~(ii) The person is required by the other contracting party 1034
to have particular training; 1035~~

~~(iii) The person's services are integrated into the 1036~~

regular functioning of the other contracting party;	1037
(iv) The person is required to perform the work personally;	1038
	1039
(v) The person is hired, supervised, or paid by the other contracting party;	1040
	1041
(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;	1042
	1043
	1044
(vii) The person's hours of work are established by the other contracting party;	1045
	1046
(viii) The person is required to devote full time to the business of the other contracting party;	1047
	1048
(ix) The person is required to perform the work on the premises of the other contracting party;	1049
	1050
(x) The person is required to follow the order of work set by the other contracting party;	1051
	1052
(xi) The person is required to make oral or written reports of progress to the other contracting party;	1053
	1054
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	1055
	1056
(xiii) The person's expenses are paid for by the other contracting party;	1057
	1058
(xiv) The person's tools and materials are furnished by the other contracting party;	1059
	1060
(xv) The person is provided with the facilities used to perform services;	1061
	1062

(xvi) The person does not realize a profit or suffer a	1063
loss as a result of the services provided;	1064
(xvii) The person is not performing services for a number	1065
of employers at the same time;	1066
(xviii) The person does not make the same services	1067
available to the general public;	1068
(xix) The other contracting party has a right to discharge	1069
the person;	1070
(xx) The person has the right to end the relationship with	1071
the other contracting party without incurring liability pursuant	1072
to an employment contract or agreement.	1073
Every person in the service of any independent contractor	1074
or subcontractor who has failed to pay into the state insurance	1075
fund the amount of premium determined and fixed by the	1076
administrator of workers' compensation for the person's	1077
employment or occupation or if a self-insuring employer has	1078
failed to pay compensation and benefits directly to the	1079
employer's injured and to the dependents of the employer's	1080
killed employees as required by section 4123.35 of the Revised	1081
Code, shall be considered as the employee of the person who has	1082
entered into a contract, whether written or verbal, with such	1083
independent contractor unless such employees or their legal	1084
representatives or beneficiaries elect, after injury or death,	1085
to regard such independent contractor as the employer.	1086
(2) "Employee" does not mean <u>any of the following</u> :	1087
(a) A duly ordained, commissioned, or licensed minister or	1088
assistant or associate minister of a church in the exercise of	1089
ministry;	1090

(b) Any officer of a family farm corporation; 1091

(c) An individual ~~incorporated as a corporation, or~~ 1092

~~(d) An individual~~ who otherwise is an employee of an 1093
employer but who signs the waiver and affidavit specified in 1094
section 4123.15 of the Revised Code on the condition that the 1095
administrator of workers' compensation has granted a waiver and 1096
exception to the individual's employer under section 4123.15 of 1097
the Revised Code. 1098

Any employer may elect to include as an "employee" within 1099
this chapter, any person excluded from the definition of 1100
"employee" pursuant to division (A)(2) of this section. If an 1101
employer is a partnership, sole proprietorship, ~~individual~~ 1102
~~incorporated as a corporation, or~~ family farm corporation, such 1103
employer may elect to include as an "employee" within this 1104
chapter, any member of such partnership, the owner of the sole 1105
proprietorship, ~~the individual incorporated as a corporation, or~~ 1106
the officers of the family farm corporation. In the event of an 1107
election, the employer shall serve upon the bureau of workers' 1108
compensation written notice naming the persons to be covered, 1109
include such employee's remuneration for premium purposes in all 1110
future payroll reports, and no person excluded from the 1111
definition of "employee" pursuant to division (A)(2) of this 1112
section, proprietor, ~~individual incorporated as a corporation,~~ 1113
or partner shall be deemed an employee within this division 1114
until the employer has served such notice. 1115

For informational purposes only, the bureau shall 1116
prescribe such language as it considers appropriate, on such of 1117
its forms as it considers appropriate, to advise employers of 1118
their right to elect to include as an "employee" within this 1119
chapter a sole proprietor, any member of a partnership, ~~an~~ 1120

~~individual incorporated as a corporation,~~ the officers of a 1121
family farm corporation, or a person excluded from the 1122
definition of "employee" under division (A) (2) of this section, 1123
that they should check any health and disability insurance 1124
policy, or other form of health and disability plan or contract, 1125
presently covering them, or the purchase of which they may be 1126
considering, to determine whether such policy, plan, or contract 1127
excludes benefits for illness or injury that they might have 1128
elected to have covered by workers' compensation. 1129

(B) "Employer" means: 1130

(1) The state, including state hospitals, each county, 1131
municipal corporation, township, school district, and hospital 1132
owned by a political subdivision or subdivisions other than the 1133
state; 1134

(2) Every person, firm, professional employer 1135
organization, and private corporation, including any public 1136
service corporation, that (a) has in service one or more 1137
employees or shared employees regularly in the same business or 1138
in or about the same establishment under any contract of hire, 1139
express or implied, oral or written, or (b) is bound by any such 1140
contract of hire or by any other written contract, to pay into 1141
the insurance fund the premiums provided by this chapter. 1142

All such employers are subject to this chapter. Any member 1143
of a firm or association, who regularly performs manual labor in 1144
or about a mine, factory, or other establishment, including a 1145
household establishment, shall be considered an employee in 1146
determining whether such person, firm, or private corporation, 1147
or public service corporation, has in its service, one or more 1148
employees and the employer shall report the income derived from 1149
such labor to the bureau as part of the payroll of such 1150

employer, and such member shall thereupon be entitled to all the 1151
benefits of an employee. 1152

(C) "Injury" includes any injury, whether caused by 1153
external accidental means or accidental in character and result, 1154
received in the course of, and arising out of, the injured 1155
employee's employment. "Injury" does not include: 1156

(1) Psychiatric conditions except where the claimant's 1157
psychiatric conditions have arisen from an injury or 1158
occupational disease sustained by that claimant or where the 1159
claimant's psychiatric conditions have arisen from sexual 1160
conduct in which the claimant was forced by threat of physical 1161
harm to engage or participate; 1162

(2) Injury or disability caused primarily by the natural 1163
deterioration of tissue, an organ, or part of the body; 1164

(3) Injury or disability incurred in voluntary 1165
participation in an employer-sponsored recreation or fitness 1166
activity if the employee signs a waiver of the employee's right 1167
to compensation or benefits under this chapter prior to engaging 1168
in the recreation or fitness activity; 1169

(4) A condition that pre-existed an injury unless that 1170
pre-existing condition is substantially aggravated by the 1171
injury. Such a substantial aggravation must be documented by 1172
objective diagnostic findings, objective clinical findings, or 1173
objective test results. Subjective complaints may be evidence of 1174
such a substantial aggravation. However, subjective complaints 1175
without objective diagnostic findings, objective clinical 1176
findings, or objective test results are insufficient to 1177
substantiate a substantial aggravation. 1178

(D) "Child" includes a posthumous child and a child 1179

legally adopted prior to the injury. 1180

(E) "Family farm corporation" means a corporation founded 1181
for the purpose of farming agricultural land in which the 1182
majority of the voting stock is held by and the majority of the 1183
stockholders are persons or the spouse of persons related to 1184
each other within the fourth degree of kinship, according to the 1185
rules of the civil law, and at least one of the related persons 1186
is residing on or actively operating the farm, and none of whose 1187
stockholders are a corporation. A family farm corporation does 1188
not cease to qualify under this division where, by reason of any 1189
devise, bequest, or the operation of the laws of descent or 1190
distribution, the ownership of shares of voting stock is 1191
transferred to another person, as long as that person is within 1192
the degree of kinship stipulated in this division. 1193

(F) "Occupational disease" means a disease contracted in 1194
the course of employment, which by its causes and the 1195
characteristics of its manifestation or the condition of the 1196
employment results in a hazard which distinguishes the 1197
employment in character from employment generally, and the 1198
employment creates a risk of contracting the disease in greater 1199
degree and in a different manner from the public in general. 1200

(G) "Self-insuring employer" means an employer who is 1201
granted the privilege of paying compensation and benefits 1202
directly under section 4123.35 of the Revised Code, including a 1203
board of county commissioners for the sole purpose of 1204
constructing a sports facility as defined in section 307.696 of 1205
the Revised Code, provided that the electors of the county in 1206
which the sports facility is to be built have approved 1207
construction of a sports facility by ballot election no later 1208
than November 6, 1997. 1209

(H) "Private employer" means an employer as defined in	1210
division (B) (2) of this section.	1211
(I) "Professional employer organization" has the same	1212
meaning as in section 4125.01 of the Revised Code.	1213
(J) "Public employer" means an employer as defined in	1214
division (B) (1) of this section.	1215
(K) "Sexual conduct" means vaginal intercourse between a	1216
male and female; anal intercourse, fellatio, and cunnilingus	1217
between persons regardless of gender; and, without privilege to	1218
do so, the insertion, however slight, of any part of the body or	1219
any instrument, apparatus, or other object into the vaginal or	1220
anal cavity of another. Penetration, however slight, is	1221
sufficient to complete vaginal or anal intercourse.	1222
(L) "Other-states' insurer" means an insurance company	1223
that is authorized to provide workers' compensation insurance	1224
coverage in any of the states that permit employers to obtain	1225
insurance for workers' compensation claims through insurance	1226
companies.	1227
(M) "Other-states' coverage" means both of the following:	1228
(1) Insurance coverage secured by an eligible employer for	1229
workers' compensation claims of employees who are in employment	1230
relationships localized in a state other than this state or	1231
those employees' dependents;	1232
(2) Insurance coverage secured by an eligible employer for	1233
workers' compensation claims that arise in a state other than	1234
this state where an employer elects to obtain coverage through	1235
either the administrator or an other-states' insurer.	1236
(N) "Limited other-states coverage" means insurance	1237

coverage provided by the administrator to an eligible employer 1238
for workers' compensation claims of employees who are in an 1239
employment relationship localized in this state but are 1240
temporarily working in a state other than this state, or those 1241
employees' dependents. 1242

Sec. 4123.026. (A) The administrator of workers' 1243
compensation, or a self-insuring public employer for the peace 1244
officers, firefighters, and emergency medical workers employed 1245
by or volunteering for that self-insuring public employer, shall 1246
pay the costs of conducting post-exposure medical diagnostic 1247
services, consistent with the standards of medical care existing 1248
at the time of the exposure, to investigate whether an injury or 1249
occupational disease was sustained by a peace officer, 1250
firefighter, or emergency medical worker when coming into 1251
contact with the blood or other body fluid of another person in 1252
the course of and arising out of the peace officer's, 1253
firefighter's, or emergency medical worker's employment, or when 1254
responding to an inherently dangerous situation in the manner 1255
described in, and in accordance with the conditions specified 1256
under, division (A) (1) ~~(a)~~ of section 4123.01 of the Revised 1257
Code, through any of the following means: 1258

(1) Splash or spatter in the eye or mouth, including when 1259
received in the course of conducting mouth-to-mouth 1260
resuscitation; 1261

(2) A puncture in the skin; 1262

(3) A cut in the skin or another opening in the skin such 1263
as an open sore, wound, lesion, abrasion, or ulcer. 1264

(B) As used in this section: 1265

(1) "Peace officer" has the same meaning as in section 1266

2935.01 of the Revised Code.	1267
(2) "Firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department.	1268 1269
(3) "Emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under Chapter 4765. of the Revised Code, whether paid or volunteer.	1270 1271 1272 1273 1274
Sec. 4141.01. As used in this chapter, unless the context otherwise requires:	1275 1276
(A) (1) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, Indian tribes, and any individual or type of organization including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of political subdivisions or their instrumentalities, subsequent to December 31, 1973:	1277 1278 1279 1280 1281 1282 1283 1284 1285 1286
(a) Had in employment at least one individual, or in the case of a nonprofit organization, subsequent to December 31, 1973, had not less than four individuals in employment for some portion of a day in each of twenty different calendar weeks, in either the current or the preceding calendar year whether or not the same individual was in employment in each such day; or	1287 1288 1289 1290 1291 1292
(b) Except for a nonprofit organization, had paid for service in employment wages of fifteen hundred dollars or more in any calendar quarter in either the current or preceding	1293 1294 1295

calendar year; or 1296

(c) Had paid, subsequent to December 31, 1977, for 1297
employment in domestic service in a local college club, or local 1298
chapter of a college fraternity or sorority, cash remuneration 1299
of one thousand dollars or more in any calendar quarter in the 1300
current calendar year or the preceding calendar year, or had 1301
paid subsequent to December 31, 1977, for employment in domestic 1302
service in a private home cash remuneration of one thousand 1303
dollars in any calendar quarter in the current calendar year or 1304
the preceding calendar year: 1305

(i) For the purposes of divisions (A) (1) (a) and (b) of 1306
this section, there shall not be taken into account any wages 1307
paid to, or employment of, an individual performing domestic 1308
service as described in this division. 1309

(ii) An employer under this division shall not be an 1310
employer with respect to wages paid for any services other than 1311
domestic service unless the employer is also found to be an 1312
employer under division (A) (1) (a), (b), or (d) of this section. 1313

(d) As a farm operator or a crew leader subsequent to 1314
December 31, 1977, had in employment individuals in agricultural 1315
labor; and 1316

(i) During any calendar quarter in the current calendar 1317
year or the preceding calendar year, paid cash remuneration of 1318
twenty thousand dollars or more for the agricultural labor; or 1319

(ii) Had at least ten individuals in employment in 1320
agricultural labor, not including agricultural workers who are 1321
aliens admitted to the United States to perform agricultural 1322
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the 1323
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1324

1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in 1325
each of the twenty different calendar weeks, in either the 1326
current or preceding calendar year whether or not the same 1327
individual was in employment in each day; or 1328

(e) Is not otherwise an employer as defined under division 1329
(A)(1)(a) or (b) of this section; and 1330

(i) For which, within either the current or preceding 1331
calendar year, service, except for domestic service in a private 1332
home not covered under division (A)(1)(c) of this section, is or 1333
was performed with respect to which such employer is liable for 1334
any federal tax against which credit may be taken for 1335
contributions required to be paid into a state unemployment 1336
fund; 1337

(ii) Which, as a condition for approval of this chapter 1338
for full tax credit against the tax imposed by the "Federal 1339
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 1340
is required, pursuant to such act to be an employer under this 1341
chapter; or 1342

(iii) Who became an employer by election under division 1343
(A)(4) or (5) of this section and for the duration of such 1344
election; or 1345

(f) In the case of the state, its instrumentalities, its 1346
political subdivisions, and their instrumentalities, and Indian 1347
tribes, had in employment, as defined in divisions (B)(2)(a) and 1348
(B)(2)(1) of this section, at least one individual; 1349

(g) For the purposes of division (A)(1)(a) of this 1350
section, if any week includes both the thirty-first day of 1351
December and the first day of January, the days of that week 1352
before the first day of January shall be considered one calendar 1353

week and the days beginning the first day of January another 1354
week. 1355

(2) Each individual employed to perform or to assist in 1356
performing the work of any agent or employee of an employer is 1357
employed by such employer for all the purposes of this chapter, 1358
whether such individual was hired or paid directly by such 1359
employer or by such agent or employee, provided the employer had 1360
actual or constructive knowledge of the work. All individuals 1361
performing services for an employer of any person in this state 1362
who maintains two or more establishments within this state are 1363
employed by a single employer for the purposes of this chapter. 1364

(3) An employer subject to this chapter within any 1365
calendar year is subject to this chapter during the whole of 1366
such year and during the next succeeding calendar year. 1367

(4) An employer not otherwise subject to this chapter who 1368
files with the director of job and family services a written 1369
election to become an employer subject to this chapter for not 1370
less than two calendar years shall, with the written approval of 1371
such election by the director, become an employer subject to 1372
this chapter to the same extent as all other employers as of the 1373
date stated in such approval, and shall cease to be subject to 1374
this chapter as of the first day of January of any calendar year 1375
subsequent to such two calendar years only if at least thirty 1376
days prior to such first day of January the employer has filed 1377
with the director a written notice to that effect. 1378

(5) Any employer for whom services that do not constitute 1379
employment are performed may file with the director a written 1380
election that all such services performed by individuals in the 1381
employer's employ in one or more distinct establishments or 1382
places of business shall be deemed to constitute employment for 1383

all the purposes of this chapter, for not less than two calendar 1384
years. Upon written approval of the election by the director, 1385
such services shall be deemed to constitute employment subject 1386
to this chapter from and after the date stated in such approval. 1387
Such services shall cease to be employment subject to this 1388
chapter as of the first day of January of any calendar year 1389
subsequent to such two calendar years only if at least thirty 1390
days prior to such first day of January such employer has filed 1391
with the director a written notice to that effect. 1392

(B) (1) "Employment" means service performed by an 1393
individual for remuneration under any contract of hire, written 1394
or oral, express or implied, including service performed in 1395
interstate commerce and service performed by an officer of a 1396
corporation, without regard to whether such service is 1397
executive, managerial, or manual in nature, and without regard 1398
to whether such officer is a stockholder or a member of the 1399
board of directors of the corporation, unless it is shown to the 1400
satisfaction of the director that such individual has been and 1401
will continue to be free from direction or control over the 1402
performance of such service, both under a contract of service 1403
and in fact. The director shall adopt rules to define "direction 1404
or control." 1405

(2) "Employment" includes: 1406

(a) Service performed after December 31, 1977, by an 1407
individual in the employ of the state or any of its 1408
instrumentalities, or any political subdivision thereof or any 1409
of its instrumentalities or any instrumentality of more than one 1410
of the foregoing or any instrumentality of any of the foregoing 1411
and one or more other states or political subdivisions and 1412
without regard to divisions (A) (1) (a) and (b) of this section, 1413

provided that such service is excluded from employment as 1414
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1415
U.S.C.A. 3301, 3306(c)(7) and is not excluded under division (B) 1416
(3) of this section; or the services of employees covered by 1417
voluntary election, as provided under divisions (A)(4) and (5) 1418
of this section; 1419

(b) Service performed after December 31, 1971, by an 1420
individual in the employ of a religious, charitable, 1421
educational, or other organization which is excluded from the 1422
term "employment" as defined in the "Federal Unemployment Tax 1423
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1424
of section 26 U.S.C.A. 3306(c)(8) of that act and is not 1425
excluded under division (B)(3) of this section; 1426

(c) Domestic service performed after December 31, 1977, 1427
for an employer, as provided in division (A)(1)(c) of this 1428
section; 1429

(d) Agricultural labor performed after December 31, 1977, 1430
for a farm operator or a crew leader, as provided in division 1431
(A)(1)(d) of this section; 1432

(e) Service not covered under division (B)(1) of this 1433
section which is performed after December 31, 1971: 1434

(i) As ~~an agent-driver or commission-driver~~ a delivery 1435
driver engaged in distributing meat products, vegetable 1436
products, fruit products, bakery products, beverages ~~other than~~ 1437
~~milk, laundry, or parcels, freight, dry-cleaning services, for~~ 1438
~~the individual's employer or principal~~ similar products; 1439

(ii) As a traveling or city salesperson, other than as ~~an~~ 1440
~~agent-driver or commission-driver~~ a delivery driver, engaged on 1441
a full-time basis in the solicitation on behalf of and in the 1442

transmission to the salesperson's employer or principal except 1443
for sideline sales activities on behalf of some other person of 1444
orders from wholesalers, retailers, contractors, or operators of 1445
hotels, restaurants, or other similar establishments for 1446
merchandise for resale, or supplies for use in their business 1447
operations, ~~provided that for the purposes of division (B) (2) (e)~~ 1448
~~(ii) of this section, the services shall be deemed employment if~~ 1449
~~the contract of service contemplates that substantially all of~~ 1450
~~the services are to be performed personally by the individual~~ 1451
~~and that the individual does not have a substantial investment~~ 1452
~~in facilities used in connection with the performance of the~~ 1453
~~services other than in facilities for transportation, and the~~ 1454
~~services are not in the nature of a single transaction that is~~ 1455
~~not a part of a continuing relationship with the person for whom~~ 1456
~~the services are performed.~~ 1457

(f) An individual's entire service performed within or 1458
both within and without the state if: 1459

(i) The service is localized in this state. 1460

(ii) The service is not localized in any state, but some 1461
of the service is performed in this state and either the base of 1462
operations, or if there is no base of operations then the place 1463
from which such service is directed or controlled, is in this 1464
state or the base of operations or place from which such service 1465
is directed or controlled is not in any state in which some part 1466
of the service is performed but the individual's residence is in 1467
this state. 1468

(g) Service not covered under division (B) (2) (f) (ii) of 1469
this section and performed entirely without this state, with 1470
respect to no part of which contributions are required and paid 1471
under an unemployment compensation law of any other state, the 1472

Virgin Islands, Canada, or of the United States, if the 1473
individual performing such service is a resident of this state 1474
and the director approves the election of the employer for whom 1475
such services are performed; or, if the individual is not a 1476
resident of this state but the place from which the service is 1477
directed or controlled is in this state, the entire services of 1478
such individual shall be deemed to be employment subject to this 1479
chapter, provided service is deemed to be localized within this 1480
state if the service is performed entirely within this state or 1481
if the service is performed both within and without this state 1482
but the service performed without this state is incidental to 1483
the individual's service within the state, for example, is 1484
temporary or transitory in nature or consists of isolated 1485
transactions; 1486

(h) Service of an individual who is a citizen of the 1487
United States, performed outside the United States except in 1488
Canada after December 31, 1971, or the Virgin Islands, after 1489
December 31, 1971, and before the first day of January of the 1490
year following that in which the United States secretary of 1491
labor approves the Virgin Islands law for the first time, in the 1492
employ of an American employer, other than service which is 1493
"employment" under divisions (B) (2) (f) and (g) of this section 1494
or similar provisions of another state's law, if: 1495

(i) The employer's principal place of business in the 1496
United States is located in this state; 1497

(ii) The employer has no place of business in the United 1498
States, but the employer is an individual who is a resident of 1499
this state; or the employer is a corporation which is organized 1500
under the laws of this state, or the employer is a partnership 1501
or a trust and the number of partners or trustees who are 1502

residents of this state is greater than the number who are 1503
residents of any other state; or 1504

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1505
(ii) of this section is met but the employer has elected 1506
coverage in this state or the employer having failed to elect 1507
coverage in any state, the individual has filed a claim for 1508
benefits, based on such service, under this chapter. 1509

(i) For the purposes of division (B) (2) (h) of this 1510
section, the term "American employer" means an employer who is 1511
an individual who is a resident of the United States; or a 1512
partnership, if two-thirds or more of the partners are residents 1513
of the United States; or a trust, if all of the trustees are 1514
residents of the United States; or a corporation organized under 1515
the laws of the United States or of any state, provided the term 1516
"United States" includes the states, the District of Columbia, 1517
the Commonwealth of Puerto Rico, and the Virgin Islands. 1518

(j) Notwithstanding any other provisions of divisions (B) 1519
(1) and (2) of this section, service, except for domestic 1520
service in a private home not covered under division (A) (1) (c) 1521
of this section, with respect to which a tax is required to be 1522
paid under any federal law imposing a tax against which credit 1523
may be taken for contributions required to be paid into a state 1524
unemployment fund, or service, except for domestic service in a 1525
private home not covered under division (A) (1) (c) of this 1526
section, which, as a condition for full tax credit against the 1527
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1528
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1529
chapter. 1530

(k) Construction services performed by any individual 1531
under a construction contract, as defined in section 4141.39 of 1532

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

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

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

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

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

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

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

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

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

~~(ix) The employer requires the individual to perform~~

services on the employer's premises;	1561
(x) The employer requires the individual performing	1562
services to follow the order of work established by the	1563
employer;	1564
(xi) The employer requires the individual performing	1565
services to make oral or written reports of progress;	1566
(xii) The employer makes payment to the individual for	1567
services on a regular basis, such as hourly, weekly, or monthly;	1568
(xiii) The employer pays expenses for the individual	1569
performing services;	1570
(xiv) The employer furnishes the tools and materials for	1571
use by the individual to perform services;	1572
(xv) The individual performing services has not invested	1573
in the facilities used to perform services;	1574
(xvi) The individual performing services does not realize	1575
a profit or suffer a loss as a result of the performance of the	1576
services;	1577
(xvii) The individual performing services is not	1578
performing services for more than two employers simultaneously;	1579
(xviii) The individual performing services does not make	1580
the services available to the general public;	1581
(xix) The employer has a right to discharge the individual	1582
performing services;	1583
(xx) The individual performing services has the right to	1584
end the individual's relationship with the employer without	1585
incurring liability pursuant to an employment contract or	1586
agreement.	1587

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

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

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

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

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

(i) As a publicly elected official;

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

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

(iv) As an employee, not in the classified service as 1616
defined in section 124.11 of the Revised Code, serving on a 1617
temporary basis in case of fire, storm, snow, earthquake, flood, 1618
or similar emergency; 1619

(v) In a position which, under or pursuant to law, is 1620
designated as a major nontenured policymaking or advisory 1621
position, not in the classified service of the state, or a 1622
policymaking or advisory position the performance of the duties 1623
of which ordinarily does not require more than eight hours per 1624
week. 1625

(d) In the employ of any governmental unit or 1626
instrumentality of the United States; 1627

(e) Service performed after December 31, 1971: 1628

(i) Service in the employ of an educational institution or 1629
institution of higher education, including those operated by the 1630
state or a political subdivision, if such service is performed 1631
by a student who is enrolled and is regularly attending classes 1632
at the educational institution or institution of higher 1633
education; or 1634

(ii) By an individual who is enrolled at a nonprofit or 1635
public educational institution which normally maintains a 1636
regular faculty and curriculum and normally has a regularly 1637
organized body of students in attendance at the place where its 1638
educational activities are carried on as a student in a full- 1639
time program, taken for credit at the institution, which 1640
combines academic instruction with work experience, if the 1641
service is an integral part of the program, and the institution 1642
has so certified to the employer, provided that this subdivision 1643
shall not apply to service performed in a program established 1644

for or on behalf of an employer or group of employers. 1645

(f) Service performed by an individual in the employ of 1646
the individual's son, daughter, or spouse and service performed 1647
by a child under the age of eighteen in the employ of the 1648
child's father or mother; 1649

~~(g) Service performed for one or more principals by an 1650
individual who is compensated on a commission basis, who in the 1651
performance of the work is master of the individual's own time 1652
and efforts, and whose remuneration is wholly dependent on the 1653
amount of effort the individual chooses to expend, and which 1654
service is not subject to the "Federal Unemployment Tax Act," 53- 1655
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1656
after December 31, 1971: 1657~~

(i) By an individual for an employer as an insurance agent 1658
or as an insurance solicitor, if all this service is performed 1659
for remuneration solely by way of commission; 1660

(ii) As a home worker performing work, according to 1661
specifications furnished by the employer for whom the services 1662
are performed, on materials or goods furnished by such employer 1663
which are required to be returned to the employer or to a person 1664
designated for that purpose. 1665

(h) Service performed after December 31, 1971: 1666

(i) In the employ of a church or convention or association 1667
of churches, or in an organization which is operated primarily 1668
for religious purposes and which is operated, supervised, 1669
controlled, or principally supported by a church or convention 1670
or association of churches; 1671

(ii) By a duly ordained, commissioned, or licensed 1672
minister of a church in the exercise of the individual's 1673

ministry or by a member of a religious order in the exercise of 1674
duties required by such order; or 1675

(iii) In a facility conducted for the purpose of carrying 1676
out a program of rehabilitation for individuals whose earning 1677
capacity is impaired by age or physical or mental deficiency or 1678
injury, or providing remunerative work for individuals who 1679
because of their impaired physical or mental capacity cannot be 1680
readily absorbed in the competitive labor market, by an 1681
individual receiving such rehabilitation or remunerative work. 1682

(i) Service performed after June 30, 1939, with respect to 1683
which unemployment compensation is payable under the "Railroad 1684
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1685
351; 1686

(j) Service performed by an individual in the employ of 1687
any organization exempt from income tax under section 501 of the 1688
"Internal Revenue Code of 1954," if the remuneration for such 1689
service does not exceed fifty dollars in any calendar quarter, 1690
or if such service is in connection with the collection of dues 1691
or premiums for a fraternal beneficial society, order, or 1692
association and is performed away from the home office or is 1693
ritualistic service in connection with any such society, order, 1694
or association; 1695

(k) Casual labor not in the course of an employer's trade 1696
or business; incidental service performed by an officer, 1697
appraiser, or member of a finance committee of a bank, building 1698
and loan association, savings and loan association, or savings 1699
association when the remuneration for such incidental service 1700
exclusive of the amount paid or allotted for directors' fees 1701
does not exceed sixty dollars per calendar quarter is casual 1702
labor; 1703

(l) Service performed in the employ of a voluntary 1704
employees' beneficial association providing for the payment of 1705
life, sickness, accident, or other benefits to the members of 1706
such association or their dependents or their designated 1707
beneficiaries, if admission to a membership in such association 1708
is limited to individuals who are officers or employees of a 1709
municipal or public corporation, of a political subdivision of 1710
the state, or of the United States and no part of the net 1711
earnings of such association inures, other than through such 1712
payments, to the benefit of any private shareholder or 1713
individual; 1714

(m) Service performed by an individual in the employ of a 1715
foreign government, including service as a consular or other 1716
officer or employee or of a nondiplomatic representative; 1717

(n) Service performed in the employ of an instrumentality 1718
wholly owned by a foreign government if the service is of a 1719
character similar to that performed in foreign countries by 1720
employees of the United States or of an instrumentality thereof 1721
and if the director finds that the secretary of state of the 1722
United States has certified to the secretary of the treasury of 1723
the United States that the foreign government, with respect to 1724
whose instrumentality exemption is claimed, grants an equivalent 1725
exemption with respect to similar service performed in the 1726
foreign country by employees of the United States and of 1727
instrumentalities thereof; 1728

(o) Service with respect to which unemployment 1729
compensation is payable under an unemployment compensation 1730
system established by an act of congress; 1731

(p) Service performed as a student nurse in the employ of 1732
a hospital or a nurses' training school by an individual who is 1733

enrolled and is regularly attending classes in a nurses' 1734
training school chartered or approved pursuant to state law, and 1735
service performed as an intern in the employ of a hospital by an 1736
individual who has completed a four years' course in a medical 1737
school chartered or approved pursuant to state law; 1738

(q) Service performed by an individual under the age of 1739
eighteen in the delivery or distribution of newspapers or 1740
shopping news, not including delivery or distribution to any 1741
point for subsequent delivery or distribution; 1742

(r) Service performed in the employ of the United States 1743
or an instrumentality of the United States immune under the 1744
Constitution of the United States from the contributions imposed 1745
by this chapter, except that to the extent that congress permits 1746
states to require any instrumentalities of the United States to 1747
make payments into an unemployment fund under a state 1748
unemployment compensation act, this chapter shall be applicable 1749
to such instrumentalities and to services performed for such 1750
instrumentalities in the same manner, to the same extent, and on 1751
the same terms as to all other employers, individuals, and 1752
services, provided that if this state is not certified for any 1753
year by the proper agency of the United States under section 1754
3304 of the "Internal Revenue Code of 1954," the payments 1755
required of such instrumentalities with respect to such year 1756
shall be refunded by the director from the fund in the same 1757
manner and within the same period as is provided in division (E) 1758
of section 4141.09 of the Revised Code with respect to 1759
contributions erroneously collected; 1760

(s) Service performed by an individual as a member of a 1761
band or orchestra, provided such service does not represent the 1762
principal occupation of such individual, and which service is 1763

not subject to or required to be covered for full tax credit 1764
against the tax imposed by the "Federal Unemployment Tax Act," 1765
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1766

(t) Service performed in the employ of a day camp whose 1767
camping season does not exceed twelve weeks in any calendar 1768
year, and which service is not subject to the "Federal 1769
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1770
3311. Service performed after December 31, 1971: 1771

(i) In the employ of a hospital, if the service is 1772
performed by a patient of the hospital, as defined in division 1773
(W) of this section; 1774

(ii) For a prison or other correctional institution by an 1775
inmate of the prison or correctional institution; 1776

(iii) Service performed after December 31, 1977, by an 1777
inmate of a custodial institution operated by the state, a 1778
political subdivision, or a nonprofit organization. 1779

(u) Service that is performed by a nonresident alien 1780
individual for the period the individual temporarily is present 1781
in the United States as a nonimmigrant under division (F), (J), 1782
(M), or (Q) of section 101(a)(15) of the "Immigration and 1783
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1784
that is excluded under section 3306(c)(19) of the "Federal 1785
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1786
3311. 1787

(v) Notwithstanding any other provisions of division (B) 1788
(3) of this section, services that are excluded under divisions 1789
(B)(3)(g), (j), (k), and (l) of this section shall not be 1790
excluded from employment when performed for a nonprofit 1791
organization, as defined in division (X) of this section, or for 1792

this state or its instrumentalities, or for a political	1793
subdivision or its instrumentalities or for Indian tribes;	1794
(w) Service that is performed by an individual working as	1795
an election official or election worker if the amount of	1796
remuneration received by the individual during the calendar year	1797
for services as an election official or election worker is less	1798
than one thousand dollars;	1799
(x) Service performed for an elementary or secondary	1800
school that is operated primarily for religious purposes, that	1801
is described in subsection 501(c)(3) and exempt from federal	1802
income taxation under subsection 501(a) of the Internal Revenue	1803
Code, 26 U.S.C.A. 501;	1804
(y) Service performed by a person committed to a penal	1805
institution.	1806
(z) Service performed for an Indian tribe as described in	1807
division (B)(2)(1) of this section when performed in any of the	1808
following manners:	1809
(i) As a publicly elected official;	1810
(ii) As a member of an Indian tribal council;	1811
(iii) As a member of a legislative or judiciary body;	1812
(iv) In a position which, pursuant to Indian tribal law,	1813
is designated as a major nontenured policymaking or advisory	1814
position, or a policymaking or advisory position where the	1815
performance of the duties ordinarily does not require more than	1816
eight hours of time per week;	1817
(v) As an employee serving on a temporary basis in the	1818
case of a fire, storm, snow, earthquake, flood, or similar	1819
emergency.	1820

(aa) Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, a political subdivision or its instrumentalities, or an Indian tribe as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision, thereof, by an individual receiving the work-relief or work-training. 1821
1822
1823
1824
1825
1826
1827
1828

(bb) Participation in a learn to earn program as defined in section 4141.293 of the Revised Code. 1829
1830

(4) If the services performed during one half or more of any pay period by an employee for the person employing that employee constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing that employee do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in division (B) (4) of this section, "pay period" means a period, of not more than thirty-one consecutive days, for which payment of remuneration is ordinarily made to the employee by the person employing that employee. Division (B) (4) of this section does not apply to services performed in a pay period by an employee for the person employing that employee, if any of such service is excepted by division (B) (3) (o) of this section. 1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845

(C) "Benefits" means money payments payable to an individual who has established benefit rights, as provided in this chapter, for loss of remuneration due to the individual's unemployment. 1846
1847
1848
1849

(D) "Benefit rights" means the weekly benefit amount and 1850

the maximum benefit amount that may become payable to an 1851
individual within the individual's benefit year as determined by 1852
the director. 1853

(E) "Claim for benefits" means a claim for waiting period 1854
or benefits for a designated week. 1855

(F) "Additional claim" means the first claim for benefits 1856
filed following any separation from employment during a benefit 1857
year; "continued claim" means any claim other than the first 1858
claim for benefits and other than an additional claim. 1859

(G) (1) "Wages" means remuneration paid to an employee by 1860
each of the employee's employers with respect to employment; 1861
except that wages shall not include that part of remuneration 1862
paid during any calendar year to an individual by an employer or 1863
such employer's predecessor in interest in the same business or 1864
enterprise, which in any calendar year is in excess of eight 1865
thousand two hundred fifty dollars on and after January 1, 1992; 1866
eight thousand five hundred dollars on and after January 1, 1867
1993; eight thousand seven hundred fifty dollars on and after 1868
January 1, 1994; and nine thousand dollars on and after January 1869
1, 1995. Remuneration in excess of such amounts shall be deemed 1870
wages subject to contribution to the same extent that such 1871
remuneration is defined as wages under the "Federal Unemployment 1872
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1873
amended. The remuneration paid an employee by an employer with 1874
respect to employment in another state, upon which contributions 1875
were required and paid by such employer under the unemployment 1876
compensation act of such other state, shall be included as a 1877
part of remuneration in computing the amount specified in this 1878
division. 1879

(2) Notwithstanding division (G) (1) of this section, if, 1880

as of the computation date for any calendar year, the director 1881
determines that the level of the unemployment compensation fund 1882
is sixty per cent or more below the minimum safe level as 1883
defined in section 4141.25 of the Revised Code, then, effective 1884
the first day of January of the following calendar year, wages 1885
subject to this chapter shall not include that part of 1886
remuneration paid during any calendar year to an individual by 1887
an employer or such employer's predecessor in interest in the 1888
same business or enterprise which is in excess of nine thousand 1889
dollars. The increase in the dollar amount of wages subject to 1890
this chapter under this division shall remain in effect from the 1891
date of the director's determination pursuant to division (G) (2) 1892
of this section and thereafter notwithstanding the fact that the 1893
level in the fund may subsequently become less than sixty per 1894
cent below the minimum safe level. 1895

(H) (1) "Remuneration" means all compensation for personal 1896
services, including commissions and bonuses and the cash value 1897
of all compensation in any medium other than cash, except that 1898
in the case of agricultural or domestic service, "remuneration" 1899
includes only cash remuneration. Gratuities customarily received 1900
by an individual in the course of the individual's employment 1901
from persons other than the individual's employer and which are 1902
accounted for by such individual to the individual's employer 1903
are taxable wages. 1904

The reasonable cash value of compensation paid in any 1905
medium other than cash shall be estimated and determined in 1906
accordance with rules prescribed by the director, provided that 1907
"remuneration" does not include: 1908

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1909
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1910

713, 26 U.S.C.A. 3301 to 3311, as amended; 1911

(b) The payment by an employer, without deduction from the 1912
remuneration of the individual in the employer's employ, of the 1913
tax imposed upon an individual in the employer's employ under 1914
section 3101 of the "Internal Revenue Code of 1954," with 1915
respect to services performed after October 1, 1941. 1916

(2) "Cash remuneration" means all remuneration paid in 1917
cash, including commissions and bonuses, but not including the 1918
cash value of all compensation in any medium other than cash. 1919

(I) "Interested party" means the director and any party to 1920
whom notice of a determination of an application for benefit 1921
rights or a claim for benefits is required to be given under 1922
section 4141.28 of the Revised Code. 1923

(J) "Annual payroll" means the total amount of wages 1924
subject to contributions during a twelve-month period ending 1925
with the last day of the second calendar quarter of any calendar 1926
year. 1927

(K) "Average annual payroll" means the average of the last 1928
three annual payrolls of an employer, provided that if, as of 1929
any computation date, the employer has had less than three 1930
annual payrolls in such three-year period, such average shall be 1931
based on the annual payrolls which the employer has had as of 1932
such date. 1933

(L) (1) "Contributions" means the money payments to the 1934
state unemployment compensation fund required of employers by 1935
section 4141.25 of the Revised Code and of the state and any of 1936
its political subdivisions electing to pay contributions under 1937
section 4141.242 of the Revised Code. Employers paying 1938
contributions shall be described as "contributory employers." 1939

(2) "Payments in lieu of contributions" means the money 1940
payments to the state unemployment compensation fund required of 1941
reimbursing employers under sections 4141.241 and 4141.242 of 1942
the Revised Code. 1943

(M) An individual is "totally unemployed" in any week 1944
during which the individual performs no services and with 1945
respect to such week no remuneration is payable to the 1946
individual. 1947

(N) An individual is "partially unemployed" in any week 1948
if, due to involuntary loss of work, the total remuneration 1949
payable to the individual for such week is less than the 1950
individual's weekly benefit amount. 1951

(O) "Week" means the calendar week ending at midnight 1952
Saturday unless an equivalent week of seven consecutive calendar 1953
days is prescribed by the director. 1954

(1) "Qualifying week" means any calendar week in an 1955
individual's base period with respect to which the individual 1956
earns or is paid remuneration in employment subject to this 1957
chapter. A calendar week with respect to which an individual 1958
earns remuneration but for which payment was not made within the 1959
base period, when necessary to qualify for benefit rights, may 1960
be considered to be a qualifying week. The number of qualifying 1961
weeks which may be established in a calendar quarter shall not 1962
exceed the number of calendar weeks in the quarter. 1963

(2) "Average weekly wage" means the amount obtained by 1964
dividing an individual's total remuneration for all qualifying 1965
weeks during the base period by the number of such qualifying 1966
weeks, provided that if the computation results in an amount 1967
that is not a multiple of one dollar, such amount shall be 1968

rounded to the next lower multiple of one dollar. 1969

(P) "Weekly benefit amount" means the amount of benefits 1970
an individual would be entitled to receive for one week of total 1971
unemployment. 1972

(Q) (1) "Base period" means the first four of the last five 1973
completed calendar quarters immediately preceding the first day 1974
of an individual's benefit year, except as provided in division 1975
(Q) (2) of this section. 1976

(2) If an individual does not have sufficient qualifying 1977
weeks and wages in the base period to qualify for benefit 1978
rights, the individual's base period shall be the four most 1979
recently completed calendar quarters preceding the first day of 1980
the individual's benefit year. Such base period shall be known 1981
as the "alternate base period." If information as to weeks and 1982
wages for the most recent quarter of the alternate base period 1983
is not available to the director from the regular quarterly 1984
reports of wage information, which are systematically 1985
accessible, the director may, consistent with the provisions of 1986
section 4141.28 of the Revised Code, base the determination of 1987
eligibility for benefits on the affidavit of the claimant with 1988
respect to weeks and wages for that calendar quarter. The 1989
claimant shall furnish payroll documentation, where available, 1990
in support of the affidavit. The determination based upon the 1991
alternate base period as it relates to the claimant's benefit 1992
rights, shall be amended when the quarterly report of wage 1993
information from the employer is timely received and that 1994
information causes a change in the determination. As provided in 1995
division (B) of section 4141.28 of the Revised Code, any 1996
benefits paid and charged to an employer's account, based upon a 1997
claimant's affidavit, shall be adjusted effective as of the 1998

beginning of the claimant's benefit year. No calendar quarter in 1999
a base period or alternate base period shall be used to 2000
establish a subsequent benefit year. 2001

(3) The "base period" of a combined wage claim, as 2002
described in division (H) of section 4141.43 of the Revised 2003
Code, shall be the base period prescribed by the law of the 2004
state in which the claim is allowed. 2005

(4) For purposes of determining the weeks that comprise a 2006
completed calendar quarter under this division, only those weeks 2007
ending at midnight Saturday within the calendar quarter shall be 2008
utilized. 2009

(R) (1) "Benefit year" with respect to an individual means 2010
the fifty-two week period beginning with the first day of that 2011
week with respect to which the individual first files a valid 2012
application for determination of benefit rights, and thereafter 2013
the fifty-two week period beginning with the first day of that 2014
week with respect to which the individual next files a valid 2015
application for determination of benefit rights after the 2016
termination of the individual's last preceding benefit year, 2017
except that the application shall not be considered valid unless 2018
the individual has had employment in six weeks that is subject 2019
to this chapter or the unemployment compensation act of another 2020
state, or the United States, and has, since the beginning of the 2021
individual's previous benefit year, in the employment earned 2022
three times the average weekly wage determined for the previous 2023
benefit year. The "benefit year" of a combined wage claim, as 2024
described in division (H) of section 4141.43 of the Revised 2025
Code, shall be the benefit year prescribed by the law of the 2026
state in which the claim is allowed. Any application for 2027
determination of benefit rights made in accordance with section 2028

4141.28 of the Revised Code is valid if the individual filing 2029
such application is unemployed, has been employed by an employer 2030
or employers subject to this chapter in at least twenty 2031
qualifying weeks within the individual's base period, and has 2032
earned or been paid remuneration at an average weekly wage of 2033
not less than twenty-seven and one-half per cent of the 2034
statewide average weekly wage for such weeks. For purposes of 2035
determining whether an individual has had sufficient employment 2036
since the beginning of the individual's previous benefit year to 2037
file a valid application, "employment" means the performance of 2038
services for which remuneration is payable. 2039

(2) Effective for benefit years beginning on and after 2040
December 26, 2004, any application for determination of benefit 2041
rights made in accordance with section 4141.28 of the Revised 2042
Code is valid if the individual satisfies the criteria described 2043
in division (R) (1) of this section, and if the reason for the 2044
individual's separation from employment is not disqualifying 2045
pursuant to division (D) (2) of section 4141.29 or section 2046
4141.291 of the Revised Code. A disqualification imposed 2047
pursuant to division (D) (2) of section 4141.29 or section 2048
4141.291 of the Revised Code must be removed as provided in 2049
those sections as a requirement of establishing a valid 2050
application for benefit years beginning on and after December 2051
26, 2004. 2052

(3) The statewide average weekly wage shall be calculated 2053
by the director once a year based on the twelve-month period 2054
ending the thirtieth day of June, as set forth in division (B) 2055
(3) of section 4141.30 of the Revised Code, rounded down to the 2056
nearest dollar. Increases or decreases in the amount of 2057
remuneration required to have been earned or paid in order for 2058
individuals to have filed valid applications shall become 2059

effective on Sunday of the calendar week in which the first day 2060
of January occurs that follows the twelve-month period ending 2061
the thirtieth day of June upon which the calculation of the 2062
statewide average weekly wage was based. 2063

(4) As used in this division, an individual is 2064
"unemployed" if, with respect to the calendar week in which such 2065
application is filed, the individual is "partially unemployed" 2066
or "totally unemployed" as defined in this section or if, prior 2067
to filing the application, the individual was separated from the 2068
individual's most recent work for any reason which terminated 2069
the individual's employee-employer relationship, or was laid off 2070
indefinitely or for a definite period of seven or more days. 2071

(S) "Calendar quarter" means the period of three 2072
consecutive calendar months ending on the thirty-first day of 2073
March, the thirtieth day of June, the thirtieth day of 2074
September, and the thirty-first day of December, or the 2075
equivalent thereof as the director prescribes by rule. 2076

(T) "Computation date" means the first day of the third 2077
calendar quarter of any calendar year. 2078

(U) "Contribution period" means the calendar year 2079
beginning on the first day of January of any year. 2080

(V) "Agricultural labor," for the purpose of this 2081
division, means any service performed prior to January 1, 1972, 2082
which was agricultural labor as defined in this division prior 2083
to that date, and service performed after December 31, 1971: 2084

(1) On a farm, in the employ of any person, in connection 2085
with cultivating the soil, or in connection with raising or 2086
harvesting any agricultural or horticultural commodity, 2087
including the raising, shearing, feeding, caring for, training, 2088

and management of livestock, bees, poultry, and fur-bearing animals and wildlife; 2089
2090

(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; 2091
2092
2093
2094
2095
2096

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 U.S.C. 1141j, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; 2097
2098
2099
2100
2101
2102
2103
2104

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if the operator produced more than one half of the commodity with respect to which such service is performed; 2105
2106
2107
2108
2109
2110
2111

(5) In the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in division (V) (4) of this section, but only if the operators produced more than one-half of the commodity with respect to which the service is performed; 2112
2113
2114
2115
2116

(6) Divisions (V) (4) and (5) of this section shall not be 2117

deemed to be applicable with respect to service performed:	2118
(a) In connection with commercial canning or commercial	2119
freezing or in connection with any agricultural or horticultural	2120
commodity after its delivery to a terminal market for	2121
distribution for consumption; or	2122
(b) On a farm operated for profit if the service is not in	2123
the course of the employer's trade or business.	2124
As used in division (V) of this section, "farm" includes	2125
stock, dairy, poultry, fruit, fur-bearing animal, and truck	2126
farms, plantations, ranches, nurseries, ranges, greenhouses, or	2127
other similar structures used primarily for the raising of	2128
agricultural or horticultural commodities and orchards.	2129
(W) "Hospital" means an institution which has been	2130
registered or licensed by the Ohio department of health as a	2131
hospital.	2132
(X) "Nonprofit organization" means an organization, or	2133
group of organizations, described in section 501(c)(3) of the	2134
"Internal Revenue Code of 1954," and exempt from income tax	2135
under section 501(a) of that code.	2136
(Y) "Institution of higher education" means a public or	2137
nonprofit educational institution, including an educational	2138
institution operated by an Indian tribe, which:	2139
(1) Admits as regular students only individuals having a	2140
certificate of graduation from a high school, or the recognized	2141
equivalent;	2142
(2) Is legally authorized in this state or by the Indian	2143
tribe to provide a program of education beyond high school; and	2144
(3) Provides an educational program for which it awards a	2145

bachelor's or higher degree, or provides a program which is 2146
acceptable for full credit toward such a degree, a program of 2147
post-graduate or post-doctoral studies, or a program of training 2148
to prepare students for gainful employment in a recognized 2149
occupation. 2150

For the purposes of this division, all colleges and 2151
universities in this state are institutions of higher education. 2152

(Z) For the purposes of this chapter, "states" includes 2153
the District of Columbia, the Commonwealth of Puerto Rico, and 2154
the Virgin Islands. 2155

(AA) "Alien" means, for the purposes of division (A) (1) (d) 2156
of this section, an individual who is an alien admitted to the 2157
United States to perform service in agricultural labor pursuant 2158
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 2159
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 2160

(BB) (1) "Crew leader" means an individual who furnishes 2161
individuals to perform agricultural labor for any other employer 2162
or farm operator, and: 2163

(a) Pays, either on the individual's own behalf or on 2164
behalf of the other employer or farm operator, the individuals 2165
so furnished by the individual for the service in agricultural 2166
labor performed by them; 2167

(b) Has not entered into a written agreement with the 2168
other employer or farm operator under which the agricultural 2169
worker is designated as in the employ of the other employer or 2170
farm operator. 2171

(2) For the purposes of this chapter, any individual who 2172
is a member of a crew furnished by a crew leader to perform 2173
service in agricultural labor for any other employer or farm 2174

operator shall be treated as an employee of the crew leader if: 2175

(a) The crew leader holds a valid certificate of 2176
registration under the "Farm Labor Contractor Registration Act 2177
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 2178

(b) Substantially all the members of the crew operate or 2179
maintain tractors, mechanized harvesting or crop-dusting 2180
equipment, or any other mechanized equipment, which is provided 2181
by the crew leader; and 2182

(c) If the individual is not in the employment of the 2183
other employer or farm operator within the meaning of division 2184
(B) (1) of this section. 2185

(3) For the purposes of this division, any individual who 2186
is furnished by a crew leader to perform service in agricultural 2187
labor for any other employer or farm operator and who is not 2188
treated as in the employment of the crew leader under division 2189
(BB) (2) of this section shall be treated as the employee of the 2190
other employer or farm operator and not of the crew leader. The 2191
other employer or farm operator shall be treated as having paid 2192
cash remuneration to the individual in an amount equal to the 2193
amount of cash remuneration paid to the individual by the crew 2194
leader, either on the crew leader's own behalf or on behalf of 2195
the other employer or farm operator, for the service in 2196
agricultural labor performed for the other employer or farm 2197
operator. 2198

(CC) "Educational institution" means an institution other 2199
than an institution of higher education as defined in division 2200
(Y) of this section, including an educational institution 2201
operated by an Indian tribe, which: 2202

(1) Offers participants, trainees, or students an 2203

organized course of study or training designed to transfer to 2204
them knowledge, skills, information, doctrines, attitudes, or 2205
abilities from, by, or under the guidance of an instructor or 2206
teacher; and 2207

(2) Is approved, chartered, or issued a permit to operate 2208
as a school by the state board of education, other government 2209
agency, or Indian tribe that is authorized within the state to 2210
approve, charter, or issue a permit for the operation of a 2211
school. 2212

For the purposes of this division, the courses of study or 2213
training which the institution offers may be academic, 2214
technical, trade, or preparation for gainful employment in a 2215
recognized occupation. 2216

(DD) "Cost savings day" means any unpaid day off from work 2217
in which employees continue to accrue employee benefits which 2218
have a determinable value including, but not limited to, 2219
vacation, pension contribution, sick time, and life and health 2220
insurance. 2221

(EE) "Employee" has the same meaning as in section 4175.01 2222
of the Revised Code, unless the services performed by the 2223
individual do not constitute "employment" as defined in division 2224
(B) of this section. 2225

Sec. 4175.01. As used in this chapter: 2226

(A) "Aggrieved party" means any of the following entities 2227
that believes that the entity has been injured by an employer's 2228
alleged violation of section 4175.02 of the Revised Code: 2229

(1) An employee; 2230

(2) An employer association; 2231

<u>(3) An interested party;</u>	2232
<u>(4) A labor organization.</u>	2233
<u>(B) "Construction" means any constructing, altering,</u>	2234
<u>reconstructing, repairing, rehabilitating, refinishing,</u>	2235
<u>refurbishing, remodeling, remediating, renovating, custom</u>	2236
<u>fabricating, maintenance, landscaping, improving, wrecking,</u>	2237
<u>painting, decorating, demolishing, and adding to or subtracting</u>	2238
<u>from any building, structure, highway, roadway, street, bridge,</u>	2239
<u>alley, sewer, ditch, sewage disposal plant, waterworks, parking</u>	2240
<u>facility, railroad, excavation, or other structure, project,</u>	2241
<u>development, real property or improvement, or to do any part</u>	2242
<u>thereof, regardless of whether the performance of the work</u>	2243
<u>involves the addition to or fabrication of any material or</u>	2244
<u>article of merchandise into any structure, project, development,</u>	2245
<u>real property, or improvement. "Construction" includes moving</u>	2246
<u>construction-related materials to the job site and removing</u>	2247
<u>construction-related materials from the job site.</u>	2248
<u>(C) "Contractor" means any sole proprietorship,</u>	2249
<u>partnership, firm, corporation, limited liability company,</u>	2250
<u>association, or other entity permitted by law to do business</u>	2251
<u>within this state that engages in construction. "Contractor"</u>	2252
<u>does not include either of the following:</u>	2253
<u>(1) The state or its officers, agencies, or political</u>	2254
<u>subdivisions;</u>	2255
<u>(2) The federal government.</u>	2256
<u>(D) (1) "Employee" means an individual who performs</u>	2257
<u>services for compensation for an employer.</u>	2258
<u>(2) "Employee" does not mean an individual who performs</u>	2259
<u>services for an employer and to whom all of the following</u>	2260

<u>conditions apply:</u>	2261
<u>(a) The individual has been and continues to be free from control and direction in connection with the performance of the service.</u>	2262 2263 2264
<u>(b) The individual customarily is engaged in an independently established trade, occupation, profession, or business of the same nature of the trade, occupation, profession, or business involved in the service performed.</u>	2265 2266 2267 2268
<u>(c) The individual is a separate and distinct business entity from the entity for which the service is being performed or if the individual is providing construction services and is a sole proprietorship or a partner in a partnership, the individual is a legitimate sole proprietorship or a partner in a legitimate partnership to which section 4175.04 of the Revised Code applies, as applicable.</u>	2269 2270 2271 2272 2273 2274 2275
<u>(d) The individual incurs the main expenses and has continuing or recurring business liabilities related to the service performed.</u>	2276 2277 2278
<u>(e) The individual is liable for breach of contract for failure to complete the service.</u>	2279 2280
<u>(f) An agreement, written or oral, express or implied, exists describing the service to be performed, the payment the individual will receive for performance of the service, and the time frame for completion of the service.</u>	2281 2282 2283 2284
<u>(g) The service performed by the individual is outside of the usual course of business of the employer.</u>	2285 2286
<u>(E) "Employer" means any person, the state, any agency or instrumentality of the state, and any municipal corporation,</u>	2287 2288

county, township, school district, or other political 2289
subdivision or any agency or instrumentality thereof that 2290
engages an individual to perform services. 2291

(F) "Interested party" means any of the following 2292
entities: 2293

(1) Any contractor who submits a bid for the purpose of 2294
securing the award of a contract for construction of a public 2295
improvement as that term is defined in section 4115.03 of the 2296
Revised Code; 2297

(2) Any person acting as a subcontractor of a contractor 2298
described in division (F)(1) of this section; 2299

(3) Any bona fide labor organization that has as members 2300
or is authorized to represent employees of a person described in 2301
division (F)(1) or (2) of this section; 2302

(4) Any association having as members any of the persons 2303
described in division (F)(1) or (2) of this section. 2304

(G) "Labor organization" has the same meaning as in 2305
section 3517.01 of the Revised Code. 2306

(H) "State agency" has the same meaning as in section 1.60 2307
of the Revised Code. 2308

(I) "Subcontractor" means any person who undertakes to 2309
perform construction services under a contract with any 2310
individual other than the owner, part owner, or lessee. 2311

Sec. 4175.02. (A) No employer shall fail to designate an 2312
individual who performs services for the employer as an employee 2313
unless the conditions described in division (D)(2) of section 2314
4175.01 of the Revised Code apply to that individual. The 2315
director of commerce shall not use an employer's failure to 2316

withhold federal or state income taxes with respect to an 2317
individual or to include remuneration paid to an individual for 2318
purposes of section 4123.26, 4123.41, or 4141.20 of the Revised 2319
Code when making a determination as to whether the employer 2320
violated this division. The director shall not use an 2321
individual's election to obtain workers' compensation coverage 2322
as a sole proprietor or a partnership in making a determination 2323
as to whether the individual has violated this division. The 2324
burden of proof is on the party asserting that an individual is 2325
not an employee. 2326

(B) No employer shall retaliate through discharge, or in 2327
any other manner, against any individual for exercising any 2328
rights granted under this chapter. 2329

(C) No employer shall retaliate against an individual if 2330
the individual does any of the following: 2331

(1) Makes a complaint to an employer, coworker, community 2332
organization, or to a federal or state agency or at a public 2333
hearing, stating that provisions of this chapter allegedly have 2334
been violated; 2335

(2) Causes to be instituted any proceeding under or 2336
related to this chapter; 2337

(3) Testifies or prepares to testify in an investigation 2338
or proceeding under this chapter; 2339

(4) Opposes misclassification. 2340

(D) No employer shall attempt to cause or cause an 2341
individual to waive the provisions of this chapter or to enter 2342
into a predispute waiver. 2343

(E) No employer shall violate a rule adopted by the 2344

director pursuant to section 4175.06 of the Revised Code. 2345

(F) No person shall require or request an individual to 2346
enter into an agreement or sign a document that results in the 2347
misclassification of the individual as an independent contractor 2348
or otherwise does not accurately reflect the individual's 2349
relationship with an employer. 2350

Sec. 4175.03. This chapter shall apply only to 2351
determinations as to whether an individual is an employer for 2352
purposes of section 4111.02, 4111.14, 4113.15, or 4115.03 of the 2353
Revised Code or Chapter 4121., 4123., 4141., or 5747. of the 2354
Revised Code. Nothing in this chapter shall be construed as to 2355
limit the application of any other remedies available at law or 2356
in equity. 2357

Sec. 4175.04. An employer and the director of commerce 2358
shall consider a sole proprietorship or partnership that 2359
performs construction services for the employer to be a 2360
legitimate sole proprietorship or a legitimate partnership if 2361
the employer demonstrates all of the following: 2362

(A) The sole proprietorship or partnership performs the 2363
construction service free from the direction or control of the 2364
employer over the means and manner of providing the service, 2365
subject only to the right of the employer for whom the service 2366
is provided to specify the desired result. 2367

(B) The sole proprietorship or partnership is not subject 2368
to cancellation or destruction upon severance of the 2369
relationship with the employer. 2370

(C) The owner of the sole proprietorship or the partners 2371
in the partnership have a substantial investment of capital in 2372
the sole proprietorship or partnership beyond ordinary tools and 2373

<u>equipment and a personal vehicle.</u>	2374
<u>(D) The sole proprietorship or partnership owns the</u>	2375
<u>capital goods, gains the profits, and bears the losses of the</u>	2376
<u>sole proprietorship or partnership.</u>	2377
<u>(E) The sole proprietorship or partnership makes its</u>	2378
<u>construction services available to the general public or the</u>	2379
<u>business community on a continuing basis.</u>	2380
<u>(F) The sole proprietorship or partnership reported a</u>	2381
<u>profit or loss or earnings from self-employment on the sole</u>	2382
<u>proprietorship or partnership's federal income tax schedule.</u>	2383
<u>(G) The sole proprietorship or partnership performs</u>	2384
<u>construction services for the employer under the name of the</u>	2385
<u>sole proprietorship or partnership.</u>	2386
<u>(H) If the construction services the sole proprietorship</u>	2387
<u>or partnership provides to the employer require a license or</u>	2388
<u>permit in order to provide those services, the sole</u>	2389
<u>proprietorship or partnership obtains the appropriate license or</u>	2390
<u>permit in the name of the sole proprietorship or partnership</u>	2391
<u>name and directly pays for the appropriate license or permit.</u>	2392
<u>(I) The sole proprietorship or partnership furnishes the</u>	2393
<u>tools and equipment necessary for the sole proprietorship or</u>	2394
<u>partnership to provide the construction service for the</u>	2395
<u>employer.</u>	2396
<u>(J) If necessary, the sole proprietorship or partnership</u>	2397
<u>hires its own employees without obtaining approval from the</u>	2398
<u>employer, pays those employees without direct reimbursement from</u>	2399
<u>the employer, and reports the employees' income to the internal</u>	2400
<u>revenue service.</u>	2401

(K) The employer does not represent the sole 2402
proprietorship or the partners of the partnership as an employee 2403
of the employer to the employer's customers. 2404

(L) The sole proprietorship or partnership performs 2405
similar construction services for others on whatever basis and 2406
whenever the sole proprietorship or partnership chooses. 2407

If the director of commerce, using the factors listed in 2408
this section, determines that a sole proprietorship or 2409
partnership performing construction services for an employer is 2410
not a legitimate sole proprietorship or a legitimate 2411
partnership, the director shall consider the owner of the sole 2412
proprietorship, each partner of the partnership, and each of the 2413
employees of the sole proprietorship or partnership, as 2414
applicable, as an employee of the employer for the purposes of 2415
this chapter. 2416

Sec. 4175.05. The provisions of this chapter apply to all 2417
subcontractors or lower tier subcontractors. 2418

A contractor is liable under this chapter for the failure 2419
of any subcontractor or lower tier subcontractor to properly 2420
classify individuals performing services related to construction 2421
as employees. A subcontractor is liable under this chapter for 2422
the failure of any lower tier subcontractor to properly classify 2423
individuals performing services related to construction as 2424
employees. 2425

Sec. 4175.06. The director of commerce shall enforce this 2426
chapter. The director shall hire as many investigators and other 2427
personnel as the director determines are necessary to administer 2428
and enforce this chapter. The director may adopt reasonable 2429
rules in accordance with Chapter 119. of the Revised Code to 2430

implement and administer this chapter. 2431

Sec. 4175.07. Any aggrieved party may file a complaint 2432
with the director of commerce against an employer if the 2433
aggrieved party reasonably believes that the employer is in 2434
violation of section 4175.02 of the Revised Code. The director 2435
shall conduct investigations in connection with the 2436
administration and enforcement of this chapter. Any investigator 2437
employed by the division of industrial compliance within the 2438
department of commerce is authorized to visit and inspect, at 2439
all reasonable times, all of the offices and job sites 2440
maintained by the employer who is the subject of the complaint, 2441
and is authorized to inspect and audit, at all reasonable times, 2442
all documents necessary to determine whether an individual 2443
performing services for the employer is an employee. The 2444
director may compel, by subpoena, the attendance and testimony 2445
of witnesses and the production of books, payrolls, records, 2446
papers, and other evidence in any investigation, and may 2447
administer oaths to witnesses. Upon completion of an 2448
investigation under this section, the investigator shall submit 2449
the results of the investigator's investigation to the 2450
superintendent of industrial compliance. 2451

Sec. 4175.08. If, after receiving the results of an 2452
investigation conducted pursuant to section 4175.07 of the 2453
Revised Code, the superintendent of industrial compliance 2454
determines that reasonable evidence exists that an employer has 2455
violated section 4175.02 of the Revised Code, the superintendent 2456
shall send a written notice to the director of commerce 2457
informing the director of the superintendent's determination. 2458

Within seven days after the director receives a written 2459
report from the superintendent, the director shall send a 2460

written notice to the employer who is the subject of the 2461
investigation in the same manner as prescribed in section 119.07 2462
of the Revised Code for licensees, except that the notice shall 2463
specify that a hearing will be held and shall specify the date, 2464
time, and place of the hearing. The director shall hold a 2465
hearing regarding the alleged violation in the same manner 2466
prescribed for an adjudication hearing under section 119.09 of 2467
the Revised Code. If the director, after the hearing, determines 2468
a violation has occurred, the director may discipline the 2469
employer in accordance with section 4175.09 of the Revised Code. 2470
The director's determination is an order that the person may 2471
appeal in accordance with section 119.12 of the Revised Code. If 2472
an employer who allegedly committed a violation of section 2473
4175.02 of the Revised Code fails to appear for a hearing, the 2474
director may request the court of common pleas of the county 2475
where the alleged violation occurred to compel the person to 2476
appear before the director for a hearing. 2477

Sec. 4175.09. (A) If, after a hearing held in accordance 2478
with section 4175.08 of the Revised Code, the director of 2479
commerce determines that an employer violated section 4175.02 of 2480
the Revised Code, the director may do any of the following: 2481

(1) Issue and cause to be served on any party an order to 2482
cease and desist from further violation of that section; 2483

(2) Take affirmative or other action the director 2484
considers reasonable to eliminate the effect of the violation; 2485

(3) Collect the amount of any wages, salary, employment 2486
benefits, or other compensation denied or lost to an individual 2487
because the employer misclassified the individual; 2488

(4) Assess any civil penalty allowed under section 4175.10 2489

or 4175.11 of the Revised Code. 2490

(B) If the director assesses an employer a civil penalty 2491
for a violation of section 4175.02 of the Revised Code and the 2492
employer fails to pay that civil penalty within the time period 2493
prescribed by the director, the director shall forward to the 2494
attorney general the name of the employer and the amount of the 2495
civil penalty for the purpose of collecting that civil penalty. 2496
In addition to the civil penalty assessed pursuant to this 2497
section, the employer also shall pay any fee assessed by the 2498
attorney general for collection of the civil penalty. 2499

(C) The attorney general shall bring any action for relief 2500
requested by the director in the name of the people of the state 2501
of Ohio. 2502

Sec. 4175.10. (A) Except as otherwise provided in division 2503
(B) of this section and section 4175.11 of the Revised Code, if, 2504
after a hearing conducted pursuant to section 4175.08 of the 2505
Revised Code, the director of commerce determines that an 2506
employer has violated section 4175.02 of the Revised Code, the 2507
employer may be subject to a civil penalty of one thousand five 2508
hundred dollars for each violation. 2509

(B) Except as otherwise provided in section 4175.11 of the 2510
Revised Code if, after a hearing held in accordance with section 2511
4175.08 of the Revised Code, the director determines that the 2512
employer has committed a violation of section 4175.02 of the 2513
Revised Code and that violation occurred within five years after 2514
the date the director made a determination that resulted in the 2515
director assessing the employer a civil penalty under division 2516
(A) or (B) of this section, the employer may be subject to a 2517
civil penalty not less than one thousand five hundred dollars or 2518
more than two thousand five hundred dollars for each violation 2519

found by the director that occurred during that five-year 2520
period. 2521

(C) For purposes of this section, each violation of 2522
section 4175.02 of the Revised Code constitutes a separate 2523
violation for each individual or rule involved and for each day 2524
the violation continues. 2525

(D) The director shall base the amount of any civil 2526
penalty assessed under this section upon the director's 2527
determination of the gravity of the violations committed by the 2528
employer. 2529

Sec. 4175.11. (A) Whoever knowingly violates section 2530
4175.02 of the Revised Code, or whoever obstructs the director 2531
of commerce or any other person authorized to inspect places of 2532
employment pursuant to section 4175.07 of the Revised Code may 2533
be liable for penalties up to double the amount specified in 2534
section 4175.10 of the Revised Code. 2535

(B) An employer who is liable under division (A) of this 2536
section because the employer knowingly violated section 4175.02 2537
of the Revised Code also is liable to the employee who was 2538
injured by the employer's violation for punitive damages in an 2539
amount equal to the amount of the penalties assessed against the 2540
employer pursuant to division (A) of this section. 2541

(C) The director shall impose the penalties described in 2542
divisions (A) and (B) of this section if a preponderance of the 2543
evidence demonstrates that the employer acted knowingly when 2544
committing the violation. 2545

Sec. 4175.12. If the director of commerce determines that 2546
an alleged violation of this chapter has occurred that may 2547
result in a penalty assessed pursuant to section 4175.99 of the 2548

Revised Code, the director shall refer the matter to the 2549
appropriate prosecutorial authority. 2550

Sec. 4175.13. If the director of commerce believes that 2551
any employer allegedly has violated a valid order issued by the 2552
director pursuant to section 4175.09 of the Revised Code, the 2553
director may commence an action in the court of common pleas in 2554
the county where the alleged violation has occurred and obtain 2555
from the court an order compelling the employer to obey the 2556
order of the director or be found guilty of contempt of court 2557
and punished in accordance with Chapter 2705. of the Revised 2558
Code. 2559

Sec. 4175.14. (A) An aggrieved party may file suit in the 2560
court of common pleas in the county where the alleged violation 2561
occurred or where any individual who is party to the action 2562
resides, without regard to exhaustion of any alternative 2563
administrative remedies provided in this chapter. An aggrieved 2564
party may bring an action on behalf of the aggrieved party or on 2565
behalf of any other individual who is similarly situated to the 2566
aggrieved party. If a court or a jury in a civil action brought 2567
pursuant to this division determines that a violation of section 2568
4175.02 of the Revised Code has occurred, the court shall award 2569
to the plaintiff all of the following: 2570

(1) The amount of any wages, salary, employment benefits, 2571
or other compensation denied or lost to an individual by reason 2572
of the violation, plus an equal amount in liquidated damages; 2573

(2) Compensatory damages and an amount up to five hundred 2574
dollars for each violation of section 4175.02 of the Revised 2575
Code; 2576

(3) In the case of a violation of division (B) or (C) of 2577

section 4175.02 of the Revised Code, all legal or equitable 2578
relief that the court determines appropriate; 2579

(4) Attorney's fees and costs. 2580

(B) An aggrieved party shall bring an action under 2581
division (A) of this section not later than three years after 2582
the last day the aggrieved individual or individual for whom the 2583
aggrieved party is bringing the action performed services for an 2584
employer who has allegedly violated section 4175.02 of the 2585
Revised Code. The three-year period specified in this division 2586
is tolled if the employer has deterred the ability of an 2587
individual to bring an action under this section or to file a 2588
complaint under section 4175.07 of the Revised Code. 2589

(C) If the director of commerce has determined under 2590
section 4175.09 of the Revised Code that an employer is subject 2591
to a civil penalty under section 4175.10 or 4175.11 of the 2592
Revised Code for a violation of section 4175.02 of the Revised 2593
Code, an aggrieved party, within ninety days after the director 2594
issues that determination, may bring a civil action in the court 2595
of common pleas in the county where the violation occurred to 2596
enforce that penalty. If an aggrieved party elects to bring such 2597
an action, the aggrieved party shall notify the director of that 2598
election in writing. During that ninety-day period, the attorney 2599
general shall not bring an action to enforce that penalty. After 2600
the ninety-day period expires, only the attorney general, on 2601
behalf of the director and in accordance with this chapter, may 2602
bring an action to collect the civil penalty. In any civil 2603
action brought by an aggrieved party pursuant to this division, 2604
the court shall award the aggrieved party ten per cent of the 2605
amount of the penalty owed by the employer, and the remaining 2606
amount recovered shall be awarded to the director. 2607

Sec. 4175.15. (A) The director of commerce shall create a 2608
summary of the requirements of this chapter in English and 2609
Spanish and shall post that summary on the official web site 2610
maintained by the department of commerce and on the bulletin 2611
boards located in each of the offices of the department. 2612

(B) If an employer engages an individual to perform 2613
services and that individual is not considered an employee, that 2614
employer shall post and keep posted, in a conspicuous place on 2615
each job site where that individual performs services and in 2616
each of the employer's offices, the notice prepared by the 2617
director pursuant to division (A) of this section. The director 2618
shall furnish copies of the notice without charge to an employer 2619
upon request. 2620

Sec. 4175.16. The director of commerce shall create a list 2621
of employers who have committed multiple violations of section 2622
4175.02 of the Revised Code. The director shall add an 2623
employer's name to the list if the director assesses against the 2624
employer the civil penalty described in division (B) of section 2625
4175.10 of the Revised Code. The list shall include the name of 2626
the employer and the date that the employer committed the 2627
employer's most recent violation. The director shall notify an 2628
employer that the employer will be added to this list within 2629
five days after the director determines that the employer will 2630
be added to the list. The director shall publish the list on the 2631
web site maintained by the department of commerce. No state 2632
agency shall enter into a contract with an employer included in 2633
that list for a period of four years after the date of the 2634
employer's most recent violation. The director shall remove an 2635
employer's name and information from the list upon expiration of 2636
the time period of the employer's debarment. 2637

Sec. 4175.17. The director of commerce, the director of job and family services, the tax commissioner, and the administrator of workers' compensation shall share information concerning any suspected misclassification by an employer or entity of one or more of the employer's employees as independent contractors in violation of section 4175.02 of the Revised Code. Upon determining that an employer has misclassified an employee as an independent contractor in violation of division (A) of that section, the director of commerce shall notify the director of job and family services, the tax commissioner, and the administrator, each of whom shall determine whether the employer's violation of section 4175.02 of the Revised Code results in the employer not complying with the requirements of Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the Revised Code, as applicable. The director of commerce shall determine whether the employer's violation of section 4175.02 of the Revised Code results in the employer not complying with the requirements of sections 4111.02, 4111.14, 4113.15, or 4115.03 to 4115.21 of the Revised Code. The determination made by the director of commerce that an employer has misclassified an employee as an independent contractor is binding on the director of job and family services, the tax commissioner, and the administrator unless the individual is otherwise not considered an employee under the applicable law. Notwithstanding any provision of this section to the contrary, nothing in this chapter shall be construed to limit or otherwise constrain the duties and powers of the administrator under Chapters 4121., 4123., 4127., and 4131. of the Revised Code, the director of job and family services under Chapter 4141. of the Revised Code, or the tax commissioner under Chapter 5747. of the Revised Code.

Sec. 4175.18. There is hereby created in the state

treasury the employee classification fund. The director of 2669
commerce shall deposit all moneys the director receives under 2670
this chapter, including civil penalties, into the fund. The 2671
director shall use the fund for the administration, 2672
investigation, and other expenses incurred in carrying out the 2673
director's powers and duties under this chapter. If, at the end 2674
of a fiscal year, the director determines that excess moneys 2675
exist in the fund, the director shall coordinate with the 2676
director of budget and management to transfer the excess funds 2677
to the division of administration fund created under section 2678
121.08 of the Revised Code. 2679

Sec. 4175.99. (A) An employer or person who knowingly 2680
violates division (A), (B), (C), (E), or (F) of section 4175.02 2681
of the Revised Code, for the first offense, is guilty of a 2682
misdemeanor of the fourth degree, and for any subsequent 2683
violation of division (A), (B), (C), (E), or (F) of section 2684
4175.02 of the Revised Code committed within a five-year period 2685
beginning on the date the employer or person previously was 2686
convicted of or pleaded guilty to the first violation, the 2687
employer or entity is guilty of a felony of the fifth degree. 2688

(B) Whoever knowingly violates division (D) of section 2689
4175.02 of the Revised Code is guilty of a misdemeanor of the 2690
fourth degree. 2691

Sec. 5747.01. Except as otherwise expressly provided or 2692
clearly appearing from the context, any term used in this 2693
chapter that is not otherwise defined in this section has the 2694
same meaning as when used in a comparable context in the laws of 2695
the United States relating to federal income taxes or if not 2696
used in a comparable context in those laws, has the same meaning 2697
as in section 5733.40 of the Revised Code. Any reference in this 2698

chapter to the Internal Revenue Code includes other laws of the	2699
United States relating to federal income taxes.	2700
As used in this chapter:	2701
(A) "Adjusted gross income" or "Ohio adjusted gross	2702
income" means federal adjusted gross income, as defined and used	2703
in the Internal Revenue Code, adjusted as provided in this	2704
section:	2705
(1) Add interest or dividends on obligations or securities	2706
of any state or of any political subdivision or authority of any	2707
state, other than this state and its subdivisions and	2708
authorities.	2709
(2) Add interest or dividends on obligations of any	2710
authority, commission, instrumentality, territory, or possession	2711
of the United States to the extent that the interest or	2712
dividends are exempt from federal income taxes but not from	2713
state income taxes.	2714
(3) Deduct interest or dividends on obligations of the	2715
United States and its territories and possessions or of any	2716
authority, commission, or instrumentality of the United States	2717
to the extent that the interest or dividends are included in	2718
federal adjusted gross income but exempt from state income taxes	2719
under the laws of the United States.	2720
(4) Deduct disability and survivor's benefits to the	2721
extent included in federal adjusted gross income.	2722
(5) Deduct benefits under Title II of the Social Security	2723
Act and tier 1 railroad retirement benefits to the extent	2724
included in federal adjusted gross income under section 86 of	2725
the Internal Revenue Code.	2726

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

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

(8) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the

interest or interest equivalent is included in federal adjusted gross income. 2758
2759

(9) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income. 2760
2761
2762
2763

(10) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions to variable college savings program accounts made or tuition units purchased pursuant to Chapter 3334. of the Revised Code. 2764
2765
2766
2767

(11) (a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division (A) (11) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division (A) (11) (a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division (A) (11) (a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year. 2768
2769
2770
2771
2772
2773
2774
2775
2776
2777
2778
2779
2780
2781
2782
2783
2784
2785
2786

(b) Deduct, to the extent not otherwise deducted or 2787

excluded in computing federal or Ohio adjusted gross income 2788
during the taxable year, the amount the taxpayer paid during the 2789
taxable year, not compensated for by any insurance or otherwise, 2790
for medical care of the taxpayer, the taxpayer's spouse, and 2791
dependents, to the extent the expenses exceed seven and one-half 2792
per cent of the taxpayer's federal adjusted gross income. 2793

(c) Deduct, to the extent not otherwise deducted or 2794
excluded in computing federal or Ohio adjusted gross income, any 2795
amount included in federal adjusted gross income under section 2796
105 or not excluded under section 106 of the Internal Revenue 2797
Code solely because it relates to an accident and health plan 2798
for a person who otherwise would be a "qualifying relative" and 2799
thus a "dependent" under section 152 of the Internal Revenue 2800
Code but for the fact that the person fails to meet the income 2801
and support limitations under section 152(d)(1)(B) and (C) of 2802
the Internal Revenue Code. 2803

(d) For purposes of division (A)(11) of this section, 2804
"medical care" has the meaning given in section 213 of the 2805
Internal Revenue Code, subject to the special rules, 2806
limitations, and exclusions set forth therein, and "qualified 2807
long-term care" has the same meaning given in section 7702B(c) 2808
of the Internal Revenue Code. Solely for purposes of divisions 2809
(A)(11)(a) and (c) of this section, "dependent" includes a 2810
person who otherwise would be a "qualifying relative" and thus a 2811
"dependent" under section 152 of the Internal Revenue Code but 2812
for the fact that the person fails to meet the income and 2813
support limitations under section 152(d)(1)(B) and (C) of the 2814
Internal Revenue Code. 2815

(12)(a) Deduct any amount included in federal adjusted 2816
gross income solely because the amount represents a 2817

reimbursement or refund of expenses that in any year the 2818
taxpayer had deducted as an itemized deduction pursuant to 2819
section 63 of the Internal Revenue Code and applicable United 2820
States department of the treasury regulations. The deduction 2821
otherwise allowed under division (A) (12) (a) of this section 2822
shall be reduced to the extent the reimbursement is attributable 2823
to an amount the taxpayer deducted under this section in any 2824
taxable year. 2825

(b) Add any amount not otherwise included in Ohio adjusted 2826
gross income for any taxable year to the extent that the amount 2827
is attributable to the recovery during the taxable year of any 2828
amount deducted or excluded in computing federal or Ohio 2829
adjusted gross income in any taxable year. 2830

(13) Deduct any portion of the deduction described in 2831
section 1341(a) (2) of the Internal Revenue Code, for repaying 2832
previously reported income received under a claim of right, that 2833
meets both of the following requirements: 2834

(a) It is allowable for repayment of an item that was 2835
included in the taxpayer's adjusted gross income for a prior 2836
taxable year and did not qualify for a credit under division (A) 2837
or (B) of section 5747.05 of the Revised Code for that year; 2838

(b) It does not otherwise reduce the taxpayer's adjusted 2839
gross income for the current or any other taxable year. 2840

(14) Deduct an amount equal to the deposits made to, and 2841
net investment earnings of, a medical savings account during the 2842
taxable year, in accordance with section 3924.66 of the Revised 2843
Code. The deduction allowed by division (A) (14) of this section 2844
does not apply to medical savings account deposits and earnings 2845
otherwise deducted or excluded for the current or any other 2846

taxable year from the taxpayer's federal adjusted gross income.	2847
(15) (a) Add an amount equal to the funds withdrawn from a	2848
medical savings account during the taxable year, and the net	2849
investment earnings on those funds, when the funds withdrawn	2850
were used for any purpose other than to reimburse an account	2851
holder for, or to pay, eligible medical expenses, in accordance	2852
with section 3924.66 of the Revised Code;	2853
(b) Add the amounts distributed from a medical savings	2854
account under division (A) (2) of section 3924.68 of the Revised	2855
Code during the taxable year.	2856
(16) Add any amount claimed as a credit under section	2857
5747.059 or 5747.65 of the Revised Code to the extent that such	2858
amount satisfies either of the following:	2859
(a) The amount was deducted or excluded from the	2860
computation of the taxpayer's federal adjusted gross income as	2861
required to be reported for the taxpayer's taxable year under	2862
the Internal Revenue Code;	2863
(b) The amount resulted in a reduction of the taxpayer's	2864
federal adjusted gross income as required to be reported for any	2865
of the taxpayer's taxable years under the Internal Revenue Code.	2866
(17) Deduct the amount contributed by the taxpayer to an	2867
individual development account program established by a county	2868
department of job and family services pursuant to sections	2869
329.11 to 329.14 of the Revised Code for the purpose of matching	2870
funds deposited by program participants. On request of the tax	2871
commissioner, the taxpayer shall provide any information that,	2872
in the tax commissioner's opinion, is necessary to establish the	2873
amount deducted under division (A) (17) of this section.	2874
(18) Beginning in taxable year 2001 but not for any	2875

taxable year beginning after December 31, 2005, if the taxpayer 2876
is married and files a joint return and the combined federal 2877
adjusted gross income of the taxpayer and the taxpayer's spouse 2878
for the taxable year does not exceed one hundred thousand 2879
dollars, or if the taxpayer is single and has a federal adjusted 2880
gross income for the taxable year not exceeding fifty thousand 2881
dollars, deduct amounts paid during the taxable year for 2882
qualified tuition and fees paid to an eligible institution for 2883
the taxpayer, the taxpayer's spouse, or any dependent of the 2884
taxpayer, who is a resident of this state and is enrolled in or 2885
attending a program that culminates in a degree or diploma at an 2886
eligible institution. The deduction may be claimed only to the 2887
extent that qualified tuition and fees are not otherwise 2888
deducted or excluded for any taxable year from federal or Ohio 2889
adjusted gross income. The deduction may not be claimed for 2890
educational expenses for which the taxpayer claims a credit 2891
under section 5747.27 of the Revised Code. 2892

(19) Add any reimbursement received during the taxable 2893
year of any amount the taxpayer deducted under division (A) (18) 2894
of this section in any previous taxable year to the extent the 2895
amount is not otherwise included in Ohio adjusted gross income. 2896

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 2897
(v) of this section, add five-sixths of the amount of 2898
depreciation expense allowed by subsection (k) of section 168 of 2899
the Internal Revenue Code, including the taxpayer's 2900
proportionate or distributive share of the amount of 2901
depreciation expense allowed by that subsection to a pass- 2902
through entity in which the taxpayer has a direct or indirect 2903
ownership interest. 2904

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2905

of this section, add five-sixths of the amount of qualifying 2906
section 179 depreciation expense, including the taxpayer's 2907
proportionate or distributive share of the amount of qualifying 2908
section 179 depreciation expense allowed to any pass-through 2909
entity in which the taxpayer has a direct or indirect ownership 2910
interest. 2911

(iii) Subject to division (A) (20) (a) (v) of this section, 2912
for taxable years beginning in 2012 or thereafter, if the 2913
increase in income taxes withheld by the taxpayer is equal to or 2914
greater than ten per cent of income taxes withheld by the 2915
taxpayer during the taxpayer's immediately preceding taxable 2916
year, "two-thirds" shall be substituted for "five-sixths" for 2917
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2918

(iv) Subject to division (A) (20) (a) (v) of this section, 2919
for taxable years beginning in 2012 or thereafter, a taxpayer is 2920
not required to add an amount under division (A) (20) of this 2921
section if the increase in income taxes withheld by the taxpayer 2922
and by any pass-through entity in which the taxpayer has a 2923
direct or indirect ownership interest is equal to or greater 2924
than the sum of (I) the amount of qualifying section 179 2925
depreciation expense and (II) the amount of depreciation expense 2926
allowed to the taxpayer by subsection (k) of section 168 of the 2927
Internal Revenue Code, and including the taxpayer's 2928
proportionate or distributive shares of such amounts allowed to 2929
any such pass-through entities. 2930

(v) If a taxpayer directly or indirectly incurs a net 2931
operating loss for the taxable year for federal income tax 2932
purposes, to the extent such loss resulted from depreciation 2933
expense allowed by subsection (k) of section 168 of the Internal 2934
Revenue Code and by qualifying section 179 depreciation expense, 2935

"the entire" shall be substituted for "five-sixths of the" for 2936
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2937

The tax commissioner, under procedures established by the 2938
commissioner, may waive the add-backs related to a pass-through 2939
entity if the taxpayer owns, directly or indirectly, less than 2940
five per cent of the pass-through entity. 2941

(b) Nothing in division (A) (20) of this section shall be 2942
construed to adjust or modify the adjusted basis of any asset. 2943

(c) To the extent the add-back required under division (A) 2944
(20) (a) of this section is attributable to property generating 2945
nonbusiness income or loss allocated under section 5747.20 of 2946
the Revised Code, the add-back shall be situated to the same 2947
location as the nonbusiness income or loss generated by the 2948
property for the purpose of determining the credit under 2949
division (A) of section 5747.05 of the Revised Code. Otherwise, 2950
the add-back shall be apportioned, subject to one or more of the 2951
four alternative methods of apportionment enumerated in section 2952
5747.21 of the Revised Code. 2953

(d) For the purposes of division (A) (20) (a) (v) of this 2954
section, net operating loss carryback and carryforward shall not 2955
include the allowance of any net operating loss deduction 2956
carryback or carryforward to the taxable year to the extent such 2957
loss resulted from depreciation allowed by section 168(k) of the 2958
Internal Revenue Code and by the qualifying section 179 2959
depreciation expense amount. 2960

(e) For the purposes of divisions (A) (20) and (21) of this 2961
section: 2962

(i) "Income taxes withheld" means the total amount 2963
withheld and remitted under sections 5747.06 and 5747.07 of the 2964

Revised Code by an employer during the employer's taxable year.	2965
(ii) "Increase in income taxes withheld" means the amount	2966
by which the amount of income taxes withheld by an employer	2967
during the employer's current taxable year exceeds the amount of	2968
income taxes withheld by that employer during the employer's	2969
immediately preceding taxable year.	2970
(iii) "Qualifying section 179 depreciation expense" means	2971
the difference between (I) the amount of depreciation expense	2972
directly or indirectly allowed to a taxpayer under section 179	2973
of the Internal Revised Code, and (II) the amount of	2974
depreciation expense directly or indirectly allowed to the	2975
taxpayer under section 179 of the Internal Revenue Code as that	2976
section existed on December 31, 2002.	2977
(21) (a) If the taxpayer was required to add an amount	2978
under division (A) (20) (a) of this section for a taxable year,	2979
deduct one of the following:	2980
(i) One-fifth of the amount so added for each of the five	2981
succeeding taxable years if the amount so added was five-sixths	2982
of qualifying section 179 depreciation expense or depreciation	2983
expense allowed by subsection (k) of section 168 of the Internal	2984
Revenue Code;	2985
(ii) One-half of the amount so added for each of the two	2986
succeeding taxable years if the amount so added was two-thirds	2987
of such depreciation expense;	2988
(iii) One-sixth of the amount so added for each of the six	2989
succeeding taxable years if the entire amount of such	2990
depreciation expense was so added.	2991
(b) If the amount deducted under division (A) (21) (a) of	2992
this section is attributable to an add-back allocated under	2993

division (A) (20) (c) of this section, the amount deducted shall 2994
be sitused to the same location. Otherwise, the add-back shall 2995
be apportioned using the apportionment factors for the taxable 2996
year in which the deduction is taken, subject to one or more of 2997
the four alternative methods of apportionment enumerated in 2998
section 5747.21 of the Revised Code. 2999

(c) No deduction is available under division (A) (21) (a) of 3000
this section with regard to any depreciation allowed by section 3001
168(k) of the Internal Revenue Code and by the qualifying 3002
section 179 depreciation expense amount to the extent that such 3003
depreciation results in or increases a federal net operating 3004
loss carryback or carryforward. If no such deduction is 3005
available for a taxable year, the taxpayer may carry forward the 3006
amount not deducted in such taxable year to the next taxable 3007
year and add that amount to any deduction otherwise available 3008
under division (A) (21) (a) of this section for that next taxable 3009
year. The carryforward of amounts not so deducted shall continue 3010
until the entire addition required by division (A) (20) (a) of 3011
this section has been deducted. 3012

(d) No refund shall be allowed as a result of adjustments 3013
made by division (A) (21) of this section. 3014

(22) Deduct, to the extent not otherwise deducted or 3015
excluded in computing federal or Ohio adjusted gross income for 3016
the taxable year, the amount the taxpayer received during the 3017
taxable year as reimbursement for life insurance premiums under 3018
section 5919.31 of the Revised Code. 3019

(23) Deduct, to the extent not otherwise deducted or 3020
excluded in computing federal or Ohio adjusted gross income for 3021
the taxable year, the amount the taxpayer received during the 3022
taxable year as a death benefit paid by the adjutant general 3023

under section 5919.33 of the Revised Code. 3024

(24) Deduct, to the extent included in federal adjusted 3025
gross income and not otherwise allowable as a deduction or 3026
exclusion in computing federal or Ohio adjusted gross income for 3027
the taxable year, military pay and allowances received by the 3028
taxpayer during the taxable year for active duty service in the 3029
United States army, air force, navy, marine corps, or coast 3030
guard or reserve components thereof or the national guard. The 3031
deduction may not be claimed for military pay and allowances 3032
received by the taxpayer while the taxpayer is stationed in this 3033
state. 3034

(25) Deduct, to the extent not otherwise allowable as a 3035
deduction or exclusion in computing federal or Ohio adjusted 3036
gross income for the taxable year and not otherwise compensated 3037
for by any other source, the amount of qualified organ donation 3038
expenses incurred by the taxpayer during the taxable year, not 3039
to exceed ten thousand dollars. A taxpayer may deduct qualified 3040
organ donation expenses only once for all taxable years 3041
beginning with taxable years beginning in 2007. 3042

For the purposes of division (A) (25) of this section: 3043

(a) "Human organ" means all or any portion of a human 3044
liver, pancreas, kidney, intestine, or lung, and any portion of 3045
human bone marrow. 3046

(b) "Qualified organ donation expenses" means travel 3047
expenses, lodging expenses, and wages and salary forgone by a 3048
taxpayer in connection with the taxpayer's donation, while 3049
living, of one or more of the taxpayer's human organs to another 3050
human being. 3051

(26) Deduct, to the extent not otherwise deducted or 3052

excluded in computing federal or Ohio adjusted gross income for 3053
the taxable year, amounts received by the taxpayer as retired 3054
personnel pay for service in the uniformed services or reserve 3055
components thereof, or the national guard, or received by the 3056
surviving spouse or former spouse of such a taxpayer under the 3057
survivor benefit plan on account of such a taxpayer's death. If 3058
the taxpayer receives income on account of retirement paid under 3059
the federal civil service retirement system or federal employees 3060
retirement system, or under any successor retirement program 3061
enacted by the congress of the United States that is established 3062
and maintained for retired employees of the United States 3063
government, and such retirement income is based, in whole or in 3064
part, on credit for the taxpayer's uniformed service, the 3065
deduction allowed under this division shall include only that 3066
portion of such retirement income that is attributable to the 3067
taxpayer's uniformed service, to the extent that portion of such 3068
retirement income is otherwise included in federal adjusted 3069
gross income and is not otherwise deducted under this section. 3070
Any amount deducted under division (A) (26) of this section is 3071
not included in a taxpayer's adjusted gross income for the 3072
purposes of section 5747.055 of the Revised Code. No amount may 3073
be deducted under division (A) (26) of this section on the basis 3074
of which a credit was claimed under section 5747.055 of the 3075
Revised Code. 3076

(27) Deduct, to the extent not otherwise deducted or 3077
excluded in computing federal or Ohio adjusted gross income for 3078
the taxable year, the amount the taxpayer received during the 3079
taxable year from the military injury relief fund created in 3080
section 5101.98 of the Revised Code. 3081

(28) Deduct, to the extent not otherwise deducted or 3082
excluded in computing federal or Ohio adjusted gross income for 3083

the taxable year, the amount the taxpayer received as a veterans 3084
bonus during the taxable year from the Ohio department of 3085
veterans services as authorized by Section 2r of Article VIII, 3086
Ohio Constitution. 3087

(29) Deduct, to the extent not otherwise deducted or 3088
excluded in computing federal or Ohio adjusted gross income for 3089
the taxable year, any income derived from a transfer agreement 3090
or from the enterprise transferred under that agreement under 3091
section 4313.02 of the Revised Code. 3092

(30) Deduct, to the extent not otherwise deducted or 3093
excluded in computing federal or Ohio adjusted gross income for 3094
the taxable year, Ohio college opportunity or federal Pell grant 3095
amounts received by the taxpayer or the taxpayer's spouse or 3096
dependent pursuant to section 3333.122 of the Revised Code or 20 3097
U.S.C. 1070a, et seq., and used to pay room or board furnished 3098
by the educational institution for which the grant was awarded 3099
at the institution's facilities, including meal plans 3100
administered by the institution. For the purposes of this 3101
division, receipt of a grant includes the distribution of a 3102
grant directly to an educational institution and the crediting 3103
of the grant to the enrollee's account with the institution. 3104

(31) Deduct one-half of the taxpayer's Ohio small business 3105
investor income, the deduction not to exceed sixty-two thousand 3106
five hundred dollars for each spouse if spouses file separate 3107
returns under section 5747.08 of the Revised Code or one hundred 3108
twenty-five thousand dollars for all other taxpayers. No pass- 3109
through entity may claim a deduction under this division. 3110

For the purposes of this division, "Ohio small business 3111
investor income" means the portion of a taxpayer's adjusted 3112
gross income that is business income reduced by deductions from 3113

business income and apportioned or allocated to this state under 3114
sections 5747.21 and 5747.22 of the Revised Code, to the extent 3115
not otherwise deducted or excluded in computing federal or Ohio 3116
adjusted gross income for the taxable year. 3117

(B) "Business income" means income, including gain or 3118
loss, arising from transactions, activities, and sources in the 3119
regular course of a trade or business and includes income, gain, 3120
or loss from real property, tangible property, and intangible 3121
property if the acquisition, rental, management, and disposition 3122
of the property constitute integral parts of the regular course 3123
of a trade or business operation. "Business income" includes 3124
income, including gain or loss, from a partial or complete 3125
liquidation of a business, including, but not limited to, gain 3126
or loss from the sale or other disposition of goodwill. 3127

(C) "Nonbusiness income" means all income other than 3128
business income and may include, but is not limited to, 3129
compensation, rents and royalties from real or tangible personal 3130
property, capital gains, interest, dividends and distributions, 3131
patent or copyright royalties, or lottery winnings, prizes, and 3132
awards. 3133

(D) "Compensation" means any form of remuneration paid to 3134
an employee for personal services. 3135

(E) "Fiduciary" means a guardian, trustee, executor, 3136
administrator, receiver, conservator, or any other person acting 3137
in any fiduciary capacity for any individual, trust, or estate. 3138

(F) "Fiscal year" means an accounting period of twelve 3139
months ending on the last day of any month other than December. 3140

(G) "Individual" means any natural person. 3141

(H) "Internal Revenue Code" means the "Internal Revenue 3142

Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.	3143
(I) "Resident" means any of the following, provided that	3144
division (I) (3) of this section applies only to taxable years of	3145
a trust beginning in 2002 or thereafter:	3146
(1) An individual who is domiciled in this state, subject	3147
to section 5747.24 of the Revised Code;	3148
(2) The estate of a decedent who at the time of death was	3149
domiciled in this state. The domicile tests of section 5747.24	3150
of the Revised Code are not controlling for purposes of division	3151
(I) (2) of this section.	3152
(3) A trust that, in whole or part, resides in this state.	3153
If only part of a trust resides in this state, the trust is a	3154
resident only with respect to that part.	3155
For the purposes of division (I) (3) of this section:	3156
(a) A trust resides in this state for the trust's current	3157
taxable year to the extent, as described in division (I) (3) (d)	3158
of this section, that the trust consists directly or indirectly,	3159
in whole or in part, of assets, net of any related liabilities,	3160
that were transferred, or caused to be transferred, directly or	3161
indirectly, to the trust by any of the following:	3162
(i) A person, a court, or a governmental entity or	3163
instrumentality on account of the death of a decedent, but only	3164
if the trust is described in division (I) (3) (e) (i) or (ii) of	3165
this section;	3166
(ii) A person who was domiciled in this state for the	3167
purposes of this chapter when the person directly or indirectly	3168
transferred assets to an irrevocable trust, but only if at least	3169
one of the trust's qualifying beneficiaries is domiciled in this	3170

state for the purposes of this chapter during all or some	3171
portion of the trust's current taxable year;	3172
(iii) A person who was domiciled in this state for the	3173
purposes of this chapter when the trust document or instrument	3174
or part of the trust document or instrument became irrevocable,	3175
but only if at least one of the trust's qualifying beneficiaries	3176
is a resident domiciled in this state for the purposes of this	3177
chapter during all or some portion of the trust's current	3178
taxable year. If a trust document or instrument became	3179
irrevocable upon the death of a person who at the time of death	3180
was domiciled in this state for purposes of this chapter, that	3181
person is a person described in division (I) (3) (a) (iii) of this	3182
section.	3183
(b) A trust is irrevocable to the extent that the	3184
transferor is not considered to be the owner of the net assets	3185
of the trust under sections 671 to 678 of the Internal Revenue	3186
Code.	3187
(c) With respect to a trust other than a charitable lead	3188
trust, "qualifying beneficiary" has the same meaning as	3189
"potential current beneficiary" as defined in section 1361(e) (2)	3190
of the Internal Revenue Code, and with respect to a charitable	3191
lead trust "qualifying beneficiary" is any current, future, or	3192
contingent beneficiary, but with respect to any trust	3193
"qualifying beneficiary" excludes a person or a governmental	3194
entity or instrumentality to any of which a contribution would	3195
qualify for the charitable deduction under section 170 of the	3196
Internal Revenue Code.	3197
(d) For the purposes of division (I) (3) (a) of this	3198
section, the extent to which a trust consists directly or	3199
indirectly, in whole or in part, of assets, net of any related	3200

liabilities, that were transferred directly or indirectly, in 3201
whole or part, to the trust by any of the sources enumerated in 3202
that division shall be ascertained by multiplying the fair 3203
market value of the trust's assets, net of related liabilities, 3204
by the qualifying ratio, which shall be computed as follows: 3205

(i) The first time the trust receives assets, the 3206
numerator of the qualifying ratio is the fair market value of 3207
those assets at that time, net of any related liabilities, from 3208
sources enumerated in division (I) (3) (a) of this section. The 3209
denominator of the qualifying ratio is the fair market value of 3210
all the trust's assets at that time, net of any related 3211
liabilities. 3212

(ii) Each subsequent time the trust receives assets, a 3213
revised qualifying ratio shall be computed. The numerator of the 3214
revised qualifying ratio is the sum of (1) the fair market value 3215
of the trust's assets immediately prior to the subsequent 3216
transfer, net of any related liabilities, multiplied by the 3217
qualifying ratio last computed without regard to the subsequent 3218
transfer, and (2) the fair market value of the subsequently 3219
transferred assets at the time transferred, net of any related 3220
liabilities, from sources enumerated in division (I) (3) (a) of 3221
this section. The denominator of the revised qualifying ratio is 3222
the fair market value of all the trust's assets immediately 3223
after the subsequent transfer, net of any related liabilities. 3224

(iii) Whether a transfer to the trust is by or from any of 3225
the sources enumerated in division (I) (3) (a) of this section 3226
shall be ascertained without regard to the domicile of the 3227
trust's beneficiaries. 3228

(e) For the purposes of division (I) (3) (a) (i) of this 3229
section: 3230

(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 any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:

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

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

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

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

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

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an 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.

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

(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.

(K) "Pass-through entity" has the same meaning as in

section 5733.04 of the Revised Code.	3289
(L) "Return" means the notifications and reports required	3290
to be filed pursuant to this chapter for the purpose of	3291
reporting the tax due and includes declarations of estimated tax	3292
when so required.	3293
(M) "Taxable year" means the calendar year or the	3294
taxpayer's fiscal year ending during the calendar year, or	3295
fractional part thereof, upon which the adjusted gross income is	3296
calculated pursuant to this chapter.	3297
(N) "Taxpayer" means any person subject to the tax imposed	3298
by section 5747.02 of the Revised Code or any pass-through	3299
entity that makes the election under division (D) of section	3300
5747.08 of the Revised Code.	3301
(O) "Dependents" means dependents as defined in the	3302
Internal Revenue Code and as claimed in the taxpayer's federal	3303
income tax return for the taxable year or which the taxpayer	3304
would have been permitted to claim had the taxpayer filed a	3305
federal income tax return.	3306
(P) "Principal county of employment" means, in the case of	3307
a nonresident, the county within the state in which a taxpayer	3308
performs services for an employer or, if those services are	3309
performed in more than one county, the county in which the major	3310
portion of the services are performed.	3311
(Q) As used in sections 5747.50 to 5747.55 of the Revised	3312
Code:	3313
(1) "Subdivision" means any county, municipal corporation,	3314
park district, or township.	3315
(2) "Essential local government purposes" includes all	3316

functions that any subdivision is required by general law to 3317
exercise, including like functions that are exercised under a 3318
charter adopted pursuant to the Ohio Constitution. 3319

(R) "Overpayment" means any amount already paid that 3320
exceeds the figure determined to be the correct amount of the 3321
tax. 3322

(S) "Taxable income" or "Ohio taxable income" applies only 3323
to estates and trusts, and means federal taxable income, as 3324
defined and used in the Internal Revenue Code, adjusted as 3325
follows: 3326

(1) Add interest or dividends, net of ordinary, necessary, 3327
and reasonable expenses not deducted in computing federal 3328
taxable income, on obligations or securities of any state or of 3329
any political subdivision or authority of any state, other than 3330
this state and its subdivisions and authorities, but only to the 3331
extent that such net amount is not otherwise includible in Ohio 3332
taxable income and is described in either division (S) (1) (a) or 3333
(b) of this section: 3334

(a) The net amount is not attributable to the S portion of 3335
an electing small business trust and has not been distributed to 3336
beneficiaries for the taxable year; 3337

(b) The net amount is attributable to the S portion of an 3338
electing small business trust for the taxable year. 3339

(2) Add interest or dividends, net of ordinary, necessary, 3340
and reasonable expenses not deducted in computing federal 3341
taxable income, on obligations of any authority, commission, 3342
instrumentality, territory, or possession of the United States 3343
to the extent that the interest or dividends are exempt from 3344
federal income taxes but not from state income taxes, but only 3345

to the extent that such net amount is not otherwise includible 3346
in Ohio taxable income and is described in either division (S) 3347
(1) (a) or (b) of this section; 3348

(3) Add the amount of personal exemption allowed to the 3349
estate pursuant to section 642(b) of the Internal Revenue Code; 3350

(4) Deduct interest or dividends, net of related expenses 3351
deducted in computing federal taxable income, on obligations of 3352
the United States and its territories and possessions or of any 3353
authority, commission, or instrumentality of the United States 3354
to the extent that the interest or dividends are exempt from 3355
state taxes under the laws of the United States, but only to the 3356
extent that such amount is included in federal taxable income 3357
and is described in either division (S) (1) (a) or (b) of this 3358
section; 3359

(5) Deduct the amount of wages and salaries, if any, not 3360
otherwise allowable as a deduction but that would have been 3361
allowable as a deduction in computing federal taxable income for 3362
the taxable year, had the targeted jobs credit allowed under 3363
sections 38, 51, and 52 of the Internal Revenue Code not been in 3364
effect, but only to the extent such amount relates either to 3365
income included in federal taxable income for the taxable year 3366
or to income of the S portion of an electing small business 3367
trust for the taxable year; 3368

(6) Deduct any interest or interest equivalent, net of 3369
related expenses deducted in computing federal taxable income, 3370
on public obligations and purchase obligations, but only to the 3371
extent that such net amount relates either to income included in 3372
federal taxable income for the taxable year or to income of the 3373
S portion of an electing small business trust for the taxable 3374
year; 3375

(7) Add any loss or deduct any gain resulting from sale, 3376
exchange, or other disposition of public obligations to the 3377
extent that such loss has been deducted or such gain has been 3378
included in computing either federal taxable income or income of 3379
the S portion of an electing small business trust for the 3380
taxable year; 3381

(8) Except in the case of the final return of an estate, 3382
add any amount deducted by the taxpayer on both its Ohio estate 3383
tax return pursuant to section 5731.14 of the Revised Code, and 3384
on its federal income tax return in determining federal taxable 3385
income; 3386

(9) (a) Deduct any amount included in federal taxable 3387
income solely because the amount represents a reimbursement or 3388
refund of expenses that in a previous year the decedent had 3389
deducted as an itemized deduction pursuant to section 63 of the 3390
Internal Revenue Code and applicable treasury regulations. The 3391
deduction otherwise allowed under division (S) (9) (a) of this 3392
section shall be reduced to the extent the reimbursement is 3393
attributable to an amount the taxpayer or decedent deducted 3394
under this section in any taxable year. 3395

(b) Add any amount not otherwise included in Ohio taxable 3396
income for any taxable year to the extent that the amount is 3397
attributable to the recovery during the taxable year of any 3398
amount deducted or excluded in computing federal or Ohio taxable 3399
income in any taxable year, but only to the extent such amount 3400
has not been distributed to beneficiaries for the taxable year. 3401

(10) Deduct any portion of the deduction described in 3402
section 1341(a) (2) of the Internal Revenue Code, for repaying 3403
previously reported income received under a claim of right, that 3404
meets both of the following requirements: 3405

(a) It is allowable for repayment of an item that was 3406
included in the taxpayer's taxable income or the decedent's 3407
adjusted gross income for a prior taxable year and did not 3408
qualify for a credit under division (A) or (B) of section 3409
5747.05 of the Revised Code for that year. 3410

(b) It does not otherwise reduce the taxpayer's taxable 3411
income or the decedent's adjusted gross income for the current 3412
or any other taxable year. 3413

(11) Add any amount claimed as a credit under section 3414
5747.059 or 5747.65 of the Revised Code to the extent that the 3415
amount satisfies either of the following: 3416

(a) The amount was deducted or excluded from the 3417
computation of the taxpayer's federal taxable income as required 3418
to be reported for the taxpayer's taxable year under the 3419
Internal Revenue Code; 3420

(b) The amount resulted in a reduction in the taxpayer's 3421
federal taxable income as required to be reported for any of the 3422
taxpayer's taxable years under the Internal Revenue Code. 3423

(12) Deduct any amount, net of related expenses deducted 3424
in computing federal taxable income, that a trust is required to 3425
report as farm income on its federal income tax return, but only 3426
if the assets of the trust include at least ten acres of land 3427
satisfying the definition of "land devoted exclusively to 3428
agricultural use" under section 5713.30 of the Revised Code, 3429
regardless of whether the land is valued for tax purposes as 3430
such land under sections 5713.30 to 5713.38 of the Revised Code. 3431
If the trust is a pass-through entity investor, section 5747.231 3432
of the Revised Code applies in ascertaining if the trust is 3433
eligible to claim the deduction provided by division (S)(12) of 3434

this section in connection with the pass-through entity's farm income.	3435 3436
Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S) (12) of this section is allowed only to the extent that the trust has not distributed such farm income. Division (S) (12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.	3437 3438 3439 3440 3441 3442
(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.	3443 3444 3445
(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A) (20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S) (14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.	3446 3447 3448 3449 3450 3451 3452
(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.	3453 3454 3455
(U) As used in divisions (A) (8), (A) (9), (S) (6), and (S) (7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.	3456 3457 3458 3459
(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.	3460 3461 3462
(W) "Pass-through entity investor" means any person who,	3463

during any portion of a taxable year of a pass-through entity, 3464
is a partner, member, shareholder, or equity investor in that 3465
pass-through entity. 3466

(X) "Banking day" has the same meaning as in section 3467
1304.01 of the Revised Code. 3468

(Y) "Month" means a calendar month. 3469

(Z) "Quarter" means the first three months, the second 3470
three months, the third three months, or the last three months 3471
of the taxpayer's taxable year. 3472

(AA) (1) "Eligible institution" means a state university or 3473
state institution of higher education as defined in section 3474
3345.011 of the Revised Code, or a private, nonprofit college, 3475
university, or other post-secondary institution located in this 3476
state that possesses a certificate of authorization issued by 3477
the Ohio board of regents pursuant to Chapter 1713. of the 3478
Revised Code or a certificate of registration issued by the 3479
state board of career colleges and schools under Chapter 3332. 3480
of the Revised Code. 3481

(2) "Qualified tuition and fees" means tuition and fees 3482
imposed by an eligible institution as a condition of enrollment 3483
or attendance, not exceeding two thousand five hundred dollars 3484
in each of the individual's first two years of post-secondary 3485
education. If the individual is a part-time student, "qualified 3486
tuition and fees" includes tuition and fees paid for the 3487
academic equivalent of the first two years of post-secondary 3488
education during a maximum of five taxable years, not exceeding 3489
a total of five thousand dollars. "Qualified tuition and fees" 3490
does not include: 3491

(a) Expenses for any course or activity involving sports, 3492

games, or hobbies unless the course or activity is part of the individual's degree or diploma program;	3493 3494
(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;	3495 3496 3497
(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.	3498 3499 3500
(BB) (1) "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.	3501 3502 3503 3504
(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:	3505 3506 3507 3508 3509 3510
(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.	3511 3512 3513 3514 3515
(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.	3516 3517 3518
Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.	3519 3520 3521

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

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

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

(i) The trust's modified business income;

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

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

with respect to more than one qualifying investee, the amount 3551
described in division (BB) (4) (b) of this section shall equal the 3552
sum of the products so computed for each such qualifying 3553
investee. 3554

(c) (i) With respect to a trust or portion of a trust that 3555
is a resident as ascertained in accordance with division (I) (3) 3556
(d) of this section, its modified nonbusiness income. 3557

(ii) With respect to a trust or portion of a trust that is 3558
not a resident as ascertained in accordance with division (I) (3) 3559
(d) of this section, the amount of its modified nonbusiness 3560
income satisfying the descriptions in divisions (B) (2) to (5) of 3561
section 5747.20 of the Revised Code, except as otherwise 3562
provided in division (BB) (4) (c) (ii) of this section. With 3563
respect to a trust or portion of a trust that is not a resident 3564
as ascertained in accordance with division (I) (3) (d) of this 3565
section, the trust's portion of modified nonbusiness income 3566
recognized from the sale, exchange, or other disposition of a 3567
debt interest in or equity interest in a section 5747.212 3568
entity, as defined in section 5747.212 of the Revised Code, 3569
without regard to division (A) of that section, shall not be 3570
allocated to this state in accordance with section 5747.20 of 3571
the Revised Code but shall be apportioned to this state in 3572
accordance with division (B) of section 5747.212 of the Revised 3573
Code without regard to division (A) of that section. 3574

If the allocation and apportionment of a trust's income 3575
under divisions (BB) (4) (a) and (c) of this section do not fairly 3576
represent the modified Ohio taxable income of the trust in this 3577
state, the alternative methods described in division (C) of 3578
section 5747.21 of the Revised Code may be applied in the manner 3579
and to the same extent provided in that section. 3580

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

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

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

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

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

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

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

(ii) Such gain or loss constitutes nonbusiness income.

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

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

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

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

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

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

(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;

(ii) A subsidiary that is wholly owned by any corporation 3670
that has made an election under subchapter S, chapter one, 3671
subtitle A of the Internal Revenue Code for its taxable year 3672
ending within, or on the last day of, the investor's taxable 3673
year. 3674

(2) For the purposes of this chapter, unless expressly 3675
stated otherwise, no qualifying person indirectly owns any asset 3676
directly or indirectly owned by any qualifying corporation. 3677

(FF) For purposes of this chapter and Chapter 5751. of the 3678
Revised Code: 3679

(1) "Trust" does not include a qualified pre-income tax 3680
trust. 3681

(2) A "qualified pre-income tax trust" is any pre-income 3682
tax trust that makes a qualifying pre-income tax trust election 3683
as described in division (FF)(3) of this section. 3684

(3) A "qualifying pre-income tax trust election" is an 3685
election by a pre-income tax trust to subject to the tax imposed 3686
by section 5751.02 of the Revised Code the pre-income tax trust 3687
and all pass-through entities of which the trust owns or 3688
controls, directly, indirectly, or constructively through 3689
related interests, five per cent or more of the ownership or 3690
equity interests. The trustee shall notify the tax commissioner 3691
in writing of the election on or before April 15, 2006. The 3692
election, if timely made, shall be effective on and after 3693
January 1, 2006, and shall apply for all tax periods and tax 3694
years until revoked by the trustee of the trust. 3695

(4) A "pre-income tax trust" is a trust that satisfies all 3696
of the following requirements: 3697

(a) The document or instrument creating the trust was 3698

executed by the grantor before January 1, 1972; 3699

(b) The trust became irrevocable upon the creation of the 3700
trust; and 3701

(c) The grantor was domiciled in this state at the time 3702
the trust was created. 3703

(GG) "Uniformed services" has the same meaning as in 10 3704
U.S.C. 101. 3705

(HH) "Employee" has the same meaning as in section 4175.01 3706
of the Revised Code, unless the internal revenue service has 3707
accepted the classification of an individual as an independent 3708
contractor made by the individual and the individual's payer. 3709

Section 2. That existing sections 119.14, 121.083, 3710
1349.61, 4111.02, 4111.03, 4111.09, 4111.13, 4111.14, 4113.15, 3711
4115.03, 4121.01, 4123.01, 4123.026, 4141.01, and 5747.01 of the 3712
Revised Code are hereby repealed. 3713

Section 3. Section 4111.03 of the Revised Code is 3714
presented in this act as a composite of the section as amended 3715
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 3716
Assembly. The General Assembly, applying the principle stated in 3717
division (B) of section 1.52 of the Revised Code that amendments 3718
are to be harmonized if reasonably capable of simultaneous 3719
operation, finds that the composite is the resulting version of 3720
the section in effect prior to the effective date of the section 3721
as presented in this act. 3722