

**As Passed by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Am. H. B. No. 494**

**Representative Antani**

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

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**A BILL**

To amend sections 1349.61, 4111.03, 4111.14, 1  
4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 2  
4123.38, 4123.77, 4141.01, and 5747.01 of the 3  
Revised Code to specify that a franchisor is not 4  
the employer of a franchisee or employee of a 5  
franchisee for purposes of the Minimum Fair Wage 6  
Standards Law, the Bimonthly Pay Law, the 7  
Workers' Compensation Law, the Unemployment 8  
Compensation Law, and the Income Tax Law. 9

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

**Section 1.** That sections 1349.61, 4111.03, 4111.14, 10  
4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 4123.77, 11  
4141.01, and 5747.01 of the Revised Code be amended to read as 12  
follows: 13

**Sec. 1349.61.** (A) (1) Subject to division (C) of this 14  
section, no person or entity shall sell a gift card to a 15  
purchaser containing an expiration date that is less than two 16  
years after the date the gift card is issued. 17

(2) No person or entity, within two years after a gift card is issued, shall charge service charges or fees relative to that gift card, including dormancy fees, latency fees, or administrative fees, that have the effect of reducing the total amount for which the holder of the gift card may redeem the gift card. 18  
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(B) A gift card sold without an expiration date is valid until redeemed or replaced with a new gift card. 24  
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(C) Division (A) of this section does not apply to any of the following gift cards: 26  
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(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; 28  
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(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; 32  
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(3) A gift card that is sold by a nonprofit or charitable organization for fundraising purposes; 37  
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(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; 39  
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(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; 43  
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(6) A gift card that is usable with multiple, unaffiliated sellers of goods or services; 47  
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(7) A gift card that an employer issues to an employee in recognition of services performed by the employee. 49  
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(D) Whoever violates division (A) (2) of this section is liable to the holder for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees. 51  
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(E) As used in this section: 55

(1) "Gift card" means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a monetary value where the issuer has received payment for the full monetary value for the future purchase or delivery of goods or services and any certificate issued by a merchant where the issuer has received payment for the full monetary face value of the certificate for the future purchase or delivery of goods and services. "Gift card" does not include a prepaid calling card used to make telephone calls. 56  
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(2) ~~"Employer" and "employee" have~~ "Employee" has the same meanings ~~meaning~~ as in section 4121.01 of the Revised Code. 69  
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(3) "Employer" means every person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment, or employee. 71  
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**Sec. 4111.03.** (A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's 74  
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wage rate for hours worked in excess of forty hours in one 76  
workweek, in the manner and methods provided in and subject to 77  
the exemptions of section 7 and section 13 of the "Fair Labor 78  
Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as 79  
amended. 80

Any employee employed in agriculture shall not be covered 81  
by the overtime provision of this section. 82

(B) If a county employee elects to take compensatory time 83  
off in lieu of overtime pay, for any overtime worked, 84  
compensatory time may be granted by the employee's 85  
administrative superior, on a time and one-half basis, at a time 86  
mutually convenient to the employee and the administrative 87  
superior within one hundred eighty days after the overtime is 88  
worked. 89

(C) A county appointing authority with the exception of 90  
the county department of job and family services may, by rule or 91  
resolution as is appropriate, indicate the authority's intention 92  
not to be bound by division (B) of this section, and to adopt a 93  
different policy for the calculation and payment of overtime 94  
than that established by that division. Upon adoption, the 95  
alternative overtime policy prevails. Prior to the adoption of 96  
an alternative overtime policy, a county appointing authority 97  
with the exception of the county department of job and family 98  
services shall give a written notice of the alternative policy 99  
to each employee at least ten days prior to its effective date. 100

(D) As used in this section: 101

(1) "Employ" means to suffer or to permit to work. 102

(2) "Employer" means the state of Ohio, its 103  
instrumentalities, and its political subdivisions and their 104

instrumentalities, any individual, partnership, association, 105  
corporation, business trust, or any person or group of persons, 106  
acting in the interest of an employer in relation to an 107  
employee, but does not include ~~an~~ either of the following: 108

(a) An employer whose annual gross volume of sales made 109  
for business done is less than one hundred fifty thousand 110  
dollars, exclusive of excise taxes at the retail level which are 111  
separately stated; 112

(b) A franchisor with respect to the franchisor's 113  
relationship with a franchisee or an employee of a franchisee, 114  
unless the franchisor agrees to assume that role in writing or a 115  
court of competent jurisdiction determines that the franchisor 116  
exercises a type or degree of control over the franchisee or the 117  
franchisee's employees that is not customarily exercised by a 118  
franchisor for the purpose of protecting the franchisor's 119  
trademark, brand, or both. For purposes of this division, 120  
"franchisor" and "franchisee" have the same meanings as in 16 121  
C.F.R. 436.1. 122

(3) "Employee" means any individual employed by an 123  
employer but does not include: 124

(a) Any individual employed by the United States; 125

(b) Any individual employed as a baby-sitter in the 126  
employer's home, or a live-in companion to a sick, convalescing, 127  
or elderly person whose principal duties do not include 128  
housekeeping; 129

(c) Any individual engaged in the delivery of newspapers 130  
to the consumer; 131

(d) Any individual employed as an outside salesperson 132  
compensated by commissions or employed in a bona fide executive, 133

administrative, or professional capacity as such terms are 134  
defined by the "Fair Labor Standards Act of 1938," 52 Stat. 135  
1060, 29 U.S.C.A. 201, as amended; 136

(e) Any individual who works or provides personal services 137  
of a charitable nature in a hospital or health institution for 138  
which compensation is not sought or contemplated; 139

(f) A member of a police or fire protection agency or 140  
student employed on a part-time or seasonal basis by a political 141  
subdivision of this state; 142

(g) Any individual in the employ of a camp or recreational 143  
area for children under eighteen years of age and owned and 144  
operated by a nonprofit organization or group of organizations 145  
described in Section 501(c)(3) of the "Internal Revenue Code of 146  
1954," and exempt from income tax under Section 501(a) of that 147  
code; 148

(h) Any individual employed directly by the house of 149  
representatives or directly by the senate. 150

**Sec. 4111.14.** (A) Pursuant to the general assembly's 151  
authority to establish a minimum wage under Section 34 of 152  
Article II, Ohio Constitution, this section is in implementation 153  
of Section 34a of Article II, Ohio Constitution. In implementing 154  
Section 34a of Article II, Ohio Constitution, the general 155  
assembly hereby finds that the purpose of Section 34a of Article 156  
II, Ohio Constitution, is to: 157

(1) Ensure that Ohio employees, as defined in division (B) 158  
(1) of this section, are paid the wage rate required by Section 159  
34a of Article II, Ohio Constitution; 160

(2) Ensure that covered Ohio employers maintain certain 161  
records that are directly related to the enforcement of the wage 162

rate requirements in Section 34a of Article II, Ohio 163  
Constitution; 164

(3) Ensure that Ohio employees who are paid the wage rate 165  
required by Section 34a of Article II, Ohio Constitution, may 166  
enforce their right to receive that wage rate in the manner set 167  
forth in Section 34a of Article II, Ohio Constitution; and 168

(4) Protect the privacy of Ohio employees' pay and 169  
personal information specified in Section 34a of Article II, 170  
Ohio Constitution, by restricting an employee's access, and 171  
access by a person acting on behalf of that employee, to the 172  
employee's own pay and personal information. 173

(B) In accordance with Section 34a of Article II, Ohio 174  
Constitution, the terms "employer," "employee," "employ," 175  
"person," and "independent contractor" have the same meanings as 176  
in the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 177  
U.S.C. 203, as amended. In construing the meaning of these 178  
terms, due consideration and great weight shall be given to the 179  
United States department of labor's and federal courts' 180  
interpretations of those terms under the Fair Labor Standards 181  
Act and its regulations. As used in division (B) of this 182  
section: 183

(1) "Employee" means individuals employed in Ohio, but 184  
does not mean individuals who are excluded from the definition 185  
of "employee" under 29 U.S.C. 203(e) or individuals who are 186  
exempted from the minimum wage requirements in 29 U.S.C. 213 and 187  
from the definition of "employee" in this chapter. 188

(2) "Employ" and "employee" do not include any person 189  
acting as a volunteer. In construing who is a volunteer, 190  
"volunteer" shall have the same meaning as in sections 553.101 191

to 553.106 of Title 29 of the Code of Federal Regulations, as 192  
amended, and due consideration and great weight shall be given 193  
to the United States department of labor's and federal courts' 194  
interpretations of the term "volunteer" under the Fair Labor 195  
Standards Act and its regulations. 196

(3) "Employer" does not include a franchisor with respect 197  
to the franchisor's relationship with a franchisee or an 198  
employee of a franchisee, unless the franchisor agrees to assume 199  
that role in writing or a court of competent jurisdiction 200  
determines that the franchisor exercises a type or degree of 201  
control over the franchisee or the franchisee's employees that 202  
is not customarily exercised by a franchisor for the purpose of 203  
protecting the franchisor's trademark, brand, or both. For 204  
purposes of this division, "franchisor" and "franchisee" have 205  
the same meanings as in 16 C.F.R. 436.1. 206

(C) In accordance with Section 34a of Article II, Ohio 207  
Constitution, the state may issue licenses to employers 208  
authorizing payment of a wage below that required by Section 34a 209  
of Article II, Ohio Constitution, to individuals with mental or 210  
physical disabilities that may otherwise adversely affect their 211  
opportunity for employment. In issuing such licenses, the state 212  
shall abide by the rules adopted pursuant to section 4111.06 of 213  
the Revised Code. 214

(D) (1) In accordance with Section 34a of Article II, Ohio 215  
Constitution, individuals employed in or about the property of 216  
an employer or an individual's residence on a casual basis are 217  
not included within the coverage of Section 34a of Article II, 218  
Ohio Constitution. As used in division (D) of this section: 219

(a) "Casual basis" means employment that is irregular or 220  
intermittent and that is not performed by an individual whose 221

vocation is to be employed in or about the property of the 222  
employer or individual's residence. In construing who is 223  
employed on a "casual basis," due consideration and great weight 224  
shall be given to the United States department of labor's and 225  
federal courts' interpretations of the term "casual basis" under 226  
the Fair Labor Standards Act and its regulations. 227

(b) "An individual employed in or about the property of an 228  
employer or individual's residence" means an individual employed 229  
on a casual basis or an individual employed in or about a 230  
residence on a casual basis, respectively. 231

(2) In accordance with Section 34a of Article II, Ohio 232  
Constitution, employees of a solely family-owned and operated 233  
business who are family members of an owner are not included 234  
within the coverage of Section 34a of Article II, Ohio 235  
Constitution. As used in division (D) (2) of this section, 236  
"family member" means a parent, spouse, child, stepchild, 237  
sibling, grandparent, grandchild, or other member of an owner's 238  
immediate family. 239

(E) In accordance with Section 34a of Article II, Ohio 240  
Constitution, an employer shall at the time of hire provide an 241  
employee with the employer's name, address, telephone number, 242  
and other contact information and update such information when 243  
it changes. As used in division (E) of this section: 244

(1) "Other contact information" may include, where 245  
applicable, the address of the employer's internet site on the 246  
world wide web, the employer's electronic mail address, fax 247  
number, or the name, address, and telephone number of the 248  
employer's statutory agent. "Other contact information" does not 249  
include the name, address, telephone number, fax number, 250  
internet site address, or electronic mail address of any 251

employee, shareholder, officer, director, supervisor, manager, 252  
or other individual employed by or associated with an employer. 253

(2) "When it changes" means that the employer shall 254  
provide its employees with the change in its name, address, 255  
telephone number, or other contact information within sixty 256  
business days after the change occurs. The employer shall 257  
provide the changed information by using any of its usual 258  
methods of communicating with its employees, including, but not 259  
limited to, listing the change on the employer's internet site 260  
on the world wide web, internal computer network, or a bulletin 261  
board where it commonly posts employee communications or by 262  
insertion or inclusion with employees' paychecks or pay stubs. 263

(F) In accordance with Section 34a of Article II, Ohio 264  
Constitution, an employer shall maintain a record of the name, 265  
address, occupation, pay rate, hours worked for each day worked, 266  
and each amount paid an employee for a period of not less than 267  
three years following the last date the employee was employed by 268  
that employer. As used in division (F) of this section: 269

(1) "Address" means an employee's home address as 270  
maintained in the employer's personnel file or personnel 271  
database for that employee. 272

(2) (a) With respect to employees who are not exempt from 273  
the overtime pay requirements of the Fair Labor Standards Act or 274  
this chapter, "pay rate" means an employee's base rate of pay. 275

(b) With respect to employees who are exempt from the 276  
overtime pay requirements of the Fair Labor Standards Act or 277  
this chapter, "pay rate" means an employee's annual base salary 278  
or other rate of pay by which the particular employee qualifies 279  
for that exemption under the Fair Labor Standards Act or this 280

chapter, but does not include bonuses, stock options, 281  
incentives, deferred compensation, or any other similar form of 282  
compensation. 283

(3) "Record" means the name, address, occupation, pay 284  
rate, hours worked for each day worked, and each amount paid an 285  
employee in one or more documents, databases, or other paper or 286  
electronic forms of record-keeping maintained by an employer. No 287  
one particular method or form of maintaining such a record or 288  
records is required under this division. An employer is not 289  
required to create or maintain a single record containing only 290  
the employee's name, address, occupation, pay rate, hours worked 291  
for each day worked, and each amount paid an employee. An 292  
employer shall maintain a record or records from which the 293  
employee or person acting on behalf of that employee could 294  
reasonably review the information requested by the employee or 295  
person. 296

An employer is not required to maintain the records 297  
specified in division (F) (3) of this section for any period 298  
before January 1, 2007. On and after January 1, 2007, the 299  
employer shall maintain the records required by division (F) (3) 300  
of this section for three years from the date the hours were 301  
worked by the employee and for three years after the date the 302  
employee's employment ends. 303

(4) (a) Except for individuals specified in division (F) (4) 304  
(b) of this section, "hours worked for each day worked" means 305  
the total amount of time worked by an employee in whatever 306  
increments the employer uses for its payroll purposes during a 307  
day worked by the employee. An employer is not required to keep 308  
a record of the time of day an employee begins and ends work on 309  
any given day. As used in division (F) (4) of this section, "day" 310

means a fixed period of twenty-four consecutive hours during 311  
which an employee performs work for an employer. 312

(b) An employer is not required to keep records of "hours 313  
worked for each day worked" for individuals for whom the 314  
employer is not required to keep those records under the Fair 315  
Labor Standards Act and its regulations or individuals who are 316  
not subject to the overtime pay requirements specified in 317  
section 4111.03 of the Revised Code. 318

(5) "Each amount paid an employee" means the total gross 319  
wages paid to an employee for each pay period. As used in 320  
division (F) (5) of this section, "pay period" means the period 321  
of time designated by an employer to pay an employee the 322  
employee's gross wages in accordance with the employer's payroll 323  
practices under section 4113.15 of the Revised Code. 324

(G) In accordance with Section 34a of Article II, Ohio 325  
Constitution, an employer must provide such information without 326  
charge to an employee or person acting on behalf of an employee 327  
upon request. As used in division (G) of this section: 328

(1) "Such information" means the name, address, 329  
occupation, pay rate, hours worked for each day worked, and each 330  
amount paid for the specific employee who has requested that 331  
specific employee's own information and does not include the 332  
name, address, occupation, pay rate, hours worked for each day 333  
worked, or each amount paid of any other employee of the 334  
employer. "Such information" does not include hours worked for 335  
each day worked by individuals for whom an employer is not 336  
required to keep that information under the Fair Labor Standards 337  
Act and its regulations or individuals who are not subject to 338  
the overtime pay requirements specified in section 4111.03 of 339  
the Revised Code. 340

(2) "Acting on behalf of an employee" means a person	341
acting on behalf of an employee as any of the following:	342
(a) The certified or legally recognized collective	343
bargaining representative for that employee under the applicable	344
federal law or Chapter 4117. of the Revised Code;	345
(b) The employee's attorney;	346
(c) The employee's parent, guardian, or legal custodian.	347
A person "acting on behalf of an employee" must be	348
specifically authorized by an employee in order to make a	349
request for that employee's own name, address, occupation, pay	350
rate, hours worked for each day worked, and each amount paid to	351
that employee.	352
(3) "Provide" means that an employer shall provide the	353
requested information within thirty business days after the date	354
the employer receives the request, unless either of the	355
following occurs:	356
(a) The employer and the employee or person acting on	357
behalf of the employee agree to some alternative time period for	358
providing the information.	359
(b) The thirty-day period would cause a hardship on the	360
employer under the circumstances, in which case the employer	361
must provide the requested information as soon as practicable.	362
(4) A "request" made by an employee or a person acting on	363
behalf of an employee means a request by an employee or a person	364
acting on behalf of an employee for the employee's own	365
information. The employer may require that the employee provide	366
the employer with a written request that has been signed by the	367
employee and notarized and that reasonably specifies the	368

particular information being requested. The employer may require 369  
that the person acting on behalf of an employee provide the 370  
employer with a written request that has been signed by the 371  
employee whose information is being requested and notarized and 372  
that reasonably specifies the particular information being 373  
requested. 374

(H) In accordance with Section 34a of Article II, Ohio 375  
Constitution, an employee, person acting on behalf of one or 376  
more employees, and any other interested party may file a 377  
complaint with the state for a violation of any provision of 378  
Section 34a of Article II, Ohio Constitution, or any law or 379  
regulation implementing its provisions. Such complaint shall be 380  
promptly investigated and resolved by the state. The employee's 381  
name shall be kept confidential unless disclosure is necessary 382  
to resolution of a complaint and the employee consents to 383  
disclosure. As used in division (H) of this section: 384

(1) "Complaint" means a complaint of an alleged violation 385  
pertaining to harm suffered by the employee filing the 386  
complaint, by a person acting on behalf of one or more 387  
employees, or by an interested party. 388

(2) "Acting on behalf of one or more employees" has the 389  
same meaning as "acting on behalf of an employee" in division 390  
(G) (2) of this section. Each employee must provide a separate 391  
written and notarized authorization before the person acting on 392  
that employee's or those employees' behalf may request the name, 393  
address, occupation, pay rate, hours worked for each day worked, 394  
and each amount paid for the particular employee. 395

(3) "Interested party" means a party who alleges to be 396  
injured by the alleged violation and who has standing to file a 397  
complaint under common law principles of standing. 398

(4) "Resolved by the state" means that the complaint has	399
been resolved to the satisfaction of the state.	400
(5) "Shall be kept confidential" means that the state	401
shall keep the name of the employee confidential as required by	402
division (H) of this section.	403
(I) In accordance with Section 34a of Article II, Ohio	404
Constitution, the state may on its own initiative investigate an	405
employer's compliance with Section 34a of Article II, Ohio	406
Constitution, and any law or regulation implementing Section 34a	407
of Article II, Ohio Constitution. The employer shall make	408
available to the state any records related to such investigation	409
and other information required for enforcement of Section 34a of	410
Article II, Ohio Constitution or any law or regulation	411
implementing Section 34a of Article II, Ohio Constitution. The	412
state shall investigate an employer's compliance with this	413
section in accordance with the procedures described in section	414
4111.04 of the Revised Code. All records and information related	415
to investigations by the state are confidential and are not a	416
public record subject to section 149.43 of the Revised Code.	417
This division does not prevent the state from releasing to or	418
exchanging with other state and federal wage and hour regulatory	419
authorities information related to investigations.	420
(J) In accordance with Section 34a of Article II, Ohio	421
Constitution, damages shall be calculated as an additional two	422
times the amount of the back wages and in the case of a	423
violation of an anti-retaliation provision an amount set by the	424
state or court sufficient to compensate the employee and deter	425
future violations, but not less than one hundred fifty dollars	426
for each day that the violation continued. The "not less than	427
one hundred fifty dollar" penalty specified in division (J) of	428

this section shall be imposed only for violations of the anti- 429  
retaliation provision in Section 34a of Article II, Ohio 430  
Constitution. 431

(K) In accordance with Section 34a of Article II, Ohio 432  
Constitution, an action for equitable and monetary relief may be 433  
brought against an employer by the attorney general and/or an 434  
employee or person acting on behalf of an employee or all 435  
similarly situated employees in any court of competent 436  
jurisdiction, including the court of common pleas of an 437  
employee's county of residence, for any violation of Section 34a 438  
of Article II, Ohio Constitution, or any law or regulation 439  
implementing its provisions within three years of the violation 440  
or of when the violation ceased if it was of a continuing 441  
nature, or within one year after notification to the employee of 442  
final disposition by the state of a complaint for the same 443  
violation, whichever is later. 444

(1) As used in division (K) of this section, 445  
"notification" means the date on which the notice was sent to 446  
the employee by the state. 447

(2) No employee shall join as a party plaintiff in any 448  
civil action that is brought under division (K) of this section 449  
by an employee, person acting on behalf of an employee, or 450  
person acting on behalf of all similarly situated employees 451  
unless that employee first gives written consent to become such 452  
a party plaintiff and that consent is filed with the court in 453  
which the action is brought. 454

(3) A civil action regarding an alleged violation of this 455  
section shall be maintained only under division (K) of this 456  
section. This division does not preclude the joinder in a single 457  
civil action of an action under this division and an action 458

under section 4111.10 of the Revised Code. 459

(4) Any agreement between an employee and employer to work 460  
for less than the wage rate specified in Section 34a of Article 461  
II, Ohio Constitution, is no defense to an action under this 462  
section. 463

(L) In accordance with Section 34a of Article II, Ohio 464  
Constitution, there shall be no exhaustion requirement, no 465  
procedural, pleading, or burden of proof requirements beyond 466  
those that apply generally to civil suits in order to maintain 467  
such action and no liability for costs or attorney's fees on an 468  
employee except upon a finding that such action was frivolous in 469  
accordance with the same standards that apply generally in civil 470  
suits. Nothing in division (L) of this section affects the right 471  
of an employer and employee to agree to submit a dispute under 472  
this section to alternative dispute resolution, including, but 473  
not limited to, arbitration, in lieu of maintaining the civil 474  
suit specified in division (K) of this section. Nothing in this 475  
division limits the state's ability to investigate or enforce 476  
this section. 477

(M) An employer who provides such information specified in 478  
Section 34a of Article II, Ohio Constitution, shall be immune 479  
from any civil liability for injury, death, or loss to person or 480  
property that otherwise might be incurred or imposed as a result 481  
of providing that information to an employee or person acting on 482  
behalf of an employee in response to a request by the employee 483  
or person, and the employer shall not be subject to the 484  
provisions of Chapters 1347. and 1349. of the Revised Code to 485  
the extent that such provisions would otherwise apply. As used 486  
in division (M) of this section, "such information," "acting on 487  
behalf of an employee," and "request" have the same meanings as 488

in division (G) of this section. 489

(N) As used in this section, "the state" means the 490  
director of commerce. 491

**Sec. 4113.15.** (A) Every ~~individual, firm, partnership,~~ 492  
~~association, or corporation~~ employer doing business in this 493  
state shall, on or before the first day of each month, pay all 494  
its employees the wages earned by them during the first half of 495  
the preceding month ending with the fifteenth day thereof, and 496  
shall, on or before the fifteenth day of each month, pay such 497  
employees the wages earned by them during the last half of the 498  
preceding calendar month. If at any time of payment an employee 499  
is absent from ~~his~~ the employee's regular place of labor and 500  
does not receive ~~his~~ payment of wages through an authorized 501  
representative, such person shall be entitled to said payment at 502  
any time thereafter upon demand upon the proper paymaster at the 503  
place where such wages are usually paid and where such pay is 504  
due. This section does not prohibit the daily or weekly payment 505  
of wages. The use of a longer time lapse that is customary to a 506  
given trade, profession or occupation, or establishment of a 507  
different time lapse by written contract or by operation of law. 508

(B) Where wages remain unpaid for thirty days beyond the 509  
regularly scheduled payday or, in the case where no regularly 510  
scheduled payday is applicable, for sixty days beyond the filing 511  
by the employee of a claim or for sixty days beyond the date of 512  
the agreement, award, or other act making wages payable and no 513  
contest court order or dispute of any wage claim including the 514  
assertion of a counterclaim exists accounting for nonpayment, 515  
the employer, in addition, as liquidated damages, is liable to 516  
the employee in an amount equal to six per cent of the amount of 517  
the claim still unpaid and not in contest or disputed or two 518

hundred dollars, whichever is greater. 519

(C) In the absence of a contest, court order or dispute, 520  
an employer who is party to an agreement to pay or provide 521  
fringe benefits to an employee or to make any employee 522  
authorized deduction becomes a trustee of any funds required by 523  
such agreement to be paid to any person, organization, or 524  
governmental agency from the time that the duty to make such 525  
payment arises. No person shall, without reasonable 526  
justification or excuse for such failure, knowingly fail or 527  
refuse to pay to the appropriate person, organization, or 528  
governmental agency the amount necessary to provide the benefits 529  
or accomplish the purpose of any employee authorized deduction, 530  
within thirty days after the close of the pay period during 531  
which the employee earned or had deducted the amount of money 532  
necessary to pay for the fringe benefit or make any employee 533  
authorized deduction. A failure or refusal to pay, regardless of 534  
the number of employee pay accounts involved, constitutes one 535  
offense for the first delinquency of thirty days and a separate 536  
offense for each successive delinquency of thirty days. 537

(D) As used in this section and section 4113.16 of the 538  
Revised Code: 539

(1) "Wage" means the net amount of money payable to an 540  
employee, including any guaranteed pay or reimbursement for 541  
expenses, less any federal, state, or local taxes withheld; any 542  
deductions made pursuant to a written agreement for the purpose 543  
of providing the employee with any fringe benefits; and any 544  
employee authorized deduction. 545

(2) "Fringe benefits" includes but is not limited to 546  
health, welfare, or retirement benefits, whether paid for 547  
entirely by the employer or on the basis of a joint employer- 548

employee contribution, or vacation, separation, or holiday pay.	549
(3) "Employee authorized deduction" includes but is not limited to deductions for the purpose of <u>any of the following:</u>	550 551
(a) <del>purchase</del> <u>Purchase</u> of United States savings bonds or corporate stocks or bonds <del>;</del>	552 553
(b) <del>a</del> <u>A</u> charitable contribution <del>;</del>	554
(c) <del>credit</del> <u>Credit</u> union savings or other regular savings program, <del>or ;</del>	555 556
(d) <del>repayment</del> <u>Repayment</u> of a loan or other obligation.	557
(4) <u>"Employer" means an individual, firm, partnership, association, or corporation, but does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless either of the following applies:</u>	558 559 560 561 562
(a) <u>The franchisor agrees to assume that role in writing.</u>	563
(b) <u>A court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both.</u>	564 565 566 567 568
(5) <u>"Franchisor" and "franchisee" have the same meanings as in 16 C.F.R. 436.1.</u>	569 570
<b>Sec. 4113.16.</b> No <del>corporation, contractor, person, or partnership</del> <u>employer</u> subject to section 4113.15 of the Revised Code shall, by a special contract with an employee or by other means, exempt <del>itself</del> <u>the employer</u> from this section and section 4113.15 of the Revised Code, and no assignments of future wages,	571 572 573 574 575

payable semimonthly under such sections are valid except as 576  
provided in section 1321.32 of the Revised Code. 577

**Sec. 4121.01.** (A) As used in sections 4121.01 to 4121.29 578  
of the Revised Code: 579

(1) "Place of employment" means every place, whether 580  
indoors or out, or underground, and the premises appurtenant 581  
thereto, where either temporarily or permanently any industry, 582  
trade, or business is carried on, or where any process or 583  
operation, directly or indirectly related to any industry, 584  
trade, or business, is carried on and where any person is 585  
directly or indirectly employed by another for direct or 586  
indirect gain or profit, but does not include any place where 587  
persons are employed in private domestic service or agricultural 588  
pursuits which do not involve the use of mechanical power. 589

(2) "Employment" means any trade, occupation, or process 590  
of manufacture or any method of carrying on such trade, 591  
occupation, or process of manufacture in which any person may be 592  
engaged, except in such private domestic service or agricultural 593  
pursuits as do not involve the use of mechanical power. 594

(3) "Employer" means every person, firm, corporation, 595  
agent, manager, representative, or other person having control 596  
or custody of any employment, place of employment, or employee. 597  
"Employer" does not include a franchisor with respect to the 598  
franchisor's relationship with a franchisee or an employee of a 599  
franchisee, unless the franchisor agrees to assume that role in 600  
writing or a court of competent jurisdiction determines that the 601  
franchisor exercises a type or degree of control over the 602  
franchisee or the franchisee's employees that is not customarily 603  
exercised by a franchisor for the purpose of protecting the 604  
franchisor's trademark, brand, or both. For purposes of this 605

division, "franchisor" and "franchisee" have the same meanings 606  
as in 16 C.F.R. 436.1. 607

(4) "Employee" means every person who may be required or 608  
directed by any employer, in consideration of direct or indirect 609  
gain or profit, to engage in any employment, or to go, or work, 610  
or be at any time in any place of employment. 611

(5) "Frequenter" means every person, other than an 612  
employee, who may go in or be in a place of employment under 613  
circumstances which render the person other than a trespasser. 614

(6) "Deputy" means any person employed by the industrial 615  
commission or the bureau of workers' compensation, designated as 616  
a deputy by the commission or the administrator of workers' 617  
compensation, who possesses special, technical, scientific, 618  
managerial, professional, or personal abilities or qualities in 619  
matters within the jurisdiction of the commission or the bureau, 620  
and who may be engaged in the performance of duties under the 621  
direction of the commission or the bureau calling for the 622  
exercise of such abilities or qualities. 623

(7) "Order" means any decision, rule, regulation, 624  
direction, requirement, or standard, or any other determination 625  
or decision that the bureau is empowered to and does make. 626

(8) "General order" means an order that applies generally 627  
throughout the state to all persons, employments, or places of 628  
employment, or all persons, employments, or places of employment 629  
of a class under the jurisdiction of the bureau. All other 630  
orders shall be considered special orders. 631

(9) "Local order" means any ordinance, order, rule, or 632  
determination of the legislative authority of any municipal 633  
corporation, or any trustees, or board or officers of any 634

municipal corporation upon any matter over which the bureau has 635  
jurisdiction. 636

(10) "Welfare" means comfort, decency, and moral well- 637  
being. 638

(11) "Safe" or "safety," as applied to any employment or a 639  
place of employment, means such freedom from danger to the life, 640  
health, safety, or welfare of employees or frequenters as the 641  
nature of the employment will reasonably permit, including 642  
requirements as to the hours of labor with relation to the 643  
health and welfare of employees. 644

(12) "Employee organization" means any labor or bona fide 645  
organization in which employees participate and that exists for 646  
the purpose, in whole or in part, of dealing with employers 647  
concerning grievances, labor disputes, wages, hours, terms, and 648  
other conditions of employment. 649

(B) As used in the Revised Code: 650

(1) "Industrial commission" means the chairperson of the 651  
three-member industrial commission created pursuant to section 652  
4121.02 of the Revised Code when the context refers to the 653  
authority vested in the chairperson as the chief executive 654  
officer of the three-member industrial commission pursuant to 655  
divisions (A), (B), (C), and (D) of section 4121.03 of the 656  
Revised Code. 657

(2) "Industrial commission" means the three-member 658  
industrial commission created pursuant to section 4121.02 of the 659  
Revised Code when the context refers to the authority vested in 660  
the three-member industrial commission pursuant to division (E) 661  
of section 4121.03 of the Revised Code. 662

(3) "Industrial commission" means the industrial 663

commission as a state agency when the context refers to the 664  
authority vested in the industrial commission as a state agency. 665

**Sec. 4123.01.** As used in this chapter: 666

(A) (1) "Employee" means: 667

(a) Every person in the service of the state, or of any 668  
county, municipal corporation, township, or school district 669  
therein, including regular members of lawfully constituted 670  
police and fire departments of municipal corporations and 671  
townships, whether paid or volunteer, and wherever serving 672  
within the state or on temporary assignment outside thereof, and 673  
executive officers of boards of education, under any appointment 674  
or contract of hire, express or implied, oral or written, 675  
including any elected official of the state, or of any county, 676  
municipal corporation, or township, or members of boards of 677  
education. 678

As used in division (A) (1) (a) of this section, the term 679  
"employee" includes the following persons when responding to an 680  
inherently dangerous situation that calls for an immediate 681  
response on the part of the person, regardless of whether the 682  
person is within the limits of the jurisdiction of the person's 683  
regular employment or voluntary service when responding, on the 684  
condition that the person responds to the situation as the 685  
person otherwise would if the person were on duty in the 686  
person's jurisdiction: 687

(i) Off-duty peace officers. As used in division (A) (1) (a) 688  
(i) of this section, "peace officer" has the same meaning as in 689  
section 2935.01 of the Revised Code. 690

(ii) Off-duty firefighters, whether paid or volunteer, of 691  
a lawfully constituted fire department. 692

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

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

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

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

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

(iii) The person's services are integrated into the regular functioning of the other contracting party;

(iv) The person is required to perform the work personally;	722 723
(v) The person is hired, supervised, or paid by the other contracting party;	724 725
(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;	726 727 728
(vii) The person's hours of work are established by the other contracting party;	729 730
(viii) The person is required to devote full time to the business of the other contracting party;	731 732
(ix) The person is required to perform the work on the premises of the other contracting party;	733 734
(x) The person is required to follow the order of work set by the other contracting party;	735 736
(xi) The person is required to make oral or written reports of progress to the other contracting party;	737 738
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	739 740
(xiii) The person's expenses are paid for by the other contracting party;	741 742
(xiv) The person's tools and materials are furnished by the other contracting party;	743 744
(xv) The person is provided with the facilities used to perform services;	745 746
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	747 748

(xvii) The person is not performing services for a number of employers at the same time;	749 750
(xviii) The person does not make the same services available to the general public;	751 752
(xix) The other contracting party has a right to discharge the person;	753 754
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	755 756 757
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or if a self-insuring employer has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.	758 759 760 761 762 763 764 765 766 767 768 769 770
(2) "Employee" does not mean any of the following:	771
(a) A duly ordained, commissioned, or licensed minister or assistant or associate minister of a church in the exercise of ministry;	772 773 774
(b) Any officer of a family farm corporation;	775
(c) An individual incorporated as a corporation;	776

(d) An officer of a nonprofit corporation, as defined in 777  
section 1702.01 of the Revised Code, who volunteers the person's 778  
services as ~~a~~an officer; 779

(e) An individual who otherwise is an employee of an 780  
employer but who signs the waiver and affidavit specified in 781  
section 4123.15 of the Revised Code on the condition that the 782  
administrator has granted a waiver and exception to the 783  
individual's employer under section 4123.15 of the Revised Code. 784

Any employer may elect to include as an "employee" within 785  
this chapter, any person excluded from the definition of 786  
"employee" pursuant to division (A)(2)(a), (b), (c), or (e) of 787  
this section in accordance with rules adopted by the 788  
administrator, with the advice and consent of the bureau of 789  
workers' compensation board of directors. If an employer is a 790  
partnership, sole proprietorship, individual incorporated as a 791  
corporation, or family farm corporation, such employer may elect 792  
to include as an "employee" within this chapter, any member of 793  
such partnership, the owner of the sole proprietorship, the 794  
individual incorporated as a corporation, or the officers of the 795  
family farm corporation. Nothing in this section shall prohibit 796  
a partner, sole proprietor, or any person excluded from the 797  
definition of "employee" pursuant to division (A)(2)(a), (b), 798  
(c), or (e) of this section from electing to be included as an 799  
"employee" under this chapter in accordance with rules adopted 800  
by the administrator, with the advice and consent of the board. 801

In the event of an election, the employer or person 802  
electing coverage shall serve upon the bureau of workers' 803  
compensation written notice naming the person to be covered and 804  
include the person's remuneration for premium purposes in all 805  
future payroll reports. No partner, sole proprietor, or person 806

excluded from the definition of "employee" pursuant to division 807  
(A) (2) (a), (b), (c), or (e) of this section, shall receive 808  
benefits or compensation under this chapter until the bureau 809  
receives written notice of the election permitted by this 810  
section. 811

For informational purposes only, the bureau shall 812  
prescribe such language as it considers appropriate, on such of 813  
its forms as it considers appropriate, to advise employers of 814  
their right to elect to include as an "employee" within this 815  
chapter a sole proprietor, any member of a partnership, or a 816  
person excluded from the definition of "employee" under division 817  
(A) (2) (a), (b), (c), or (e) of this section, that they should 818  
check any health and disability insurance policy, or other form 819  
of health and disability plan or contract, presently covering 820  
them, or the purchase of which they may be considering, to 821  
determine whether such policy, plan, or contract excludes 822  
benefits for illness or injury that they might have elected to 823  
have covered by workers' compensation. 824

(B) (1) "Employer" means: 825

~~(1)~~ (a) The state, including state hospitals, each county, 826  
municipal corporation, township, school district, and hospital 827  
owned by a political subdivision or subdivisions other than the 828  
state; 829

~~(2)~~ (b) Every person, firm, professional employer 830  
organization, and private corporation, including any public 831  
service corporation, that ~~(a)~~ (i) has in service one or more 832  
employees or shared employees regularly in the same business or 833  
in or about the same establishment under any contract of hire, 834  
express or implied, oral or written, or ~~(b)~~ (ii) is bound by any 835  
such contract of hire or by any other written contract, to pay 836

into the insurance fund the premiums provided by this chapter. 837

All such employers are subject to this chapter. Any member 838  
of a firm or association, who regularly performs manual labor in 839  
or about a mine, factory, or other establishment, including a 840  
household establishment, shall be considered an employee in 841  
determining whether such person, firm, or private corporation, 842  
or public service corporation, has in its service, one or more 843  
employees and the employer shall report the income derived from 844  
such labor to the bureau as part of the payroll of such 845  
employer, and such member shall thereupon be entitled to all the 846  
benefits of an employee. 847

(2) "Employer" does not include a franchisor with respect 848  
to the franchisor's relationship with a franchisee or an 849  
employee of a franchisee, unless the franchisor agrees to assume 850  
that role in writing or a court of competent jurisdiction 851  
determines that the franchisor exercises a type or degree of 852  
control over the franchisee or the franchisee's employees that 853  
is not customarily exercised by a franchisor for the purpose of 854  
protecting the franchisor's trademark, brand, or both. For 855  
purposes of this division, "franchisor" and "franchisee" have 856  
the same meanings as in 16 C.F.R. 436.1. 857

(C) "Injury" includes any injury, whether caused by 858  
external accidental means or accidental in character and result, 859  
received in the course of, and arising out of, the injured 860  
employee's employment. "Injury" does not include: 861

(1) Psychiatric conditions except where the claimant's 862  
psychiatric conditions have arisen from an injury or 863  
occupational disease sustained by that claimant or where the 864  
claimant's psychiatric conditions have arisen from sexual 865  
conduct in which the claimant was forced by threat of physical 866

harm to engage or participate; 867

(2) Injury or disability caused primarily by the natural 868  
deterioration of tissue, an organ, or part of the body; 869

(3) Injury or disability incurred in voluntary 870  
participation in an employer-sponsored recreation or fitness 871  
activity if the employee signs a waiver of the employee's right 872  
to compensation or benefits under this chapter prior to engaging 873  
in the recreation or fitness activity; 874

(4) A condition that pre-existed an injury unless that 875  
pre-existing condition is substantially aggravated by the 876  
injury. Such a substantial aggravation must be documented by 877  
objective diagnostic findings, objective clinical findings, or 878  
objective test results. Subjective complaints may be evidence of 879  
such a substantial aggravation. However, subjective complaints 880  
without objective diagnostic findings, objective clinical 881  
findings, or objective test results are insufficient to 882  
substantiate a substantial aggravation. 883

(D) "Child" includes a posthumous child and a child 884  
legally adopted prior to the injury. 885

(E) "Family farm corporation" means a corporation founded 886  
for the purpose of farming agricultural land in which the 887  
majority of the voting stock is held by and the majority of the 888  
stockholders are persons or the spouse of persons related to 889  
each other within the fourth degree of kinship, according to the 890  
rules of the civil law, and at least one of the related persons 891  
is residing on or actively operating the farm, and none of whose 892  
stockholders are a corporation. A family farm corporation does 893  
not cease to qualify under this division where, by reason of any 894  
devise, bequest, or the operation of the laws of descent or 895

distribution, the ownership of shares of voting stock is 896  
transferred to another person, as long as that person is within 897  
the degree of kinship stipulated in this division. 898

(F) "Occupational disease" means a disease contracted in 899  
the course of employment, which by its causes and the 900  
characteristics of its manifestation or the condition of the 901  
employment results in a hazard which distinguishes the 902  
employment in character from employment generally, and the 903  
employment creates a risk of contracting the disease in greater 904  
degree and in a different manner from the public in general. 905

(G) "Self-insuring employer" means an employer who is 906  
granted the privilege of paying compensation and benefits 907  
directly under section 4123.35 of the Revised Code, including a 908  
board of county commissioners for the sole purpose of 909  
constructing a sports facility as defined in section 307.696 of 910  
the Revised Code, provided that the electors of the county in 911  
which the sports facility is to be built have approved 912  
construction of a sports facility by ballot election no later 913  
than November 6, 1997. 914

(H) "Private employer" means an employer as defined in 915  
division (B) ~~(2)~~ (1)(b) of this section. 916

(I) "Professional employer organization" has the same 917  
meaning as in section 4125.01 of the Revised Code. 918

(J) "Public employer" means an employer as defined in 919  
division (B) (1) (a) of this section. 920

(K) "Sexual conduct" means vaginal intercourse between a 921  
male and female; anal intercourse, fellatio, and cunnilingus 922  
between persons regardless of gender; and, without privilege to 923  
do so, the insertion, however slight, of any part of the body or 924

any instrument, apparatus, or other object into the vaginal or 925  
anal cavity of another. Penetration, however slight, is 926  
sufficient to complete vaginal or anal intercourse. 927

(L) "Other-states' insurer" means an insurance company 928  
that is authorized to provide workers' compensation insurance 929  
coverage in any of the states that permit employers to obtain 930  
insurance for workers' compensation claims through insurance 931  
companies. 932

(M) "Other-states' coverage" means both of the following: 933

(1) Insurance coverage secured by an eligible employer for 934  
workers' compensation claims of employees who are in employment 935  
relationships localized in a state other than this state or 936  
those employees' dependents; 937

(2) Insurance coverage secured by an eligible employer for 938  
workers' compensation claims that arise in a state other than 939  
this state where an employer elects to obtain coverage through 940  
either the administrator or an other-states' insurer. 941

(N) "Limited other-states coverage" means insurance 942  
coverage provided by the administrator to an eligible employer 943  
for workers' compensation claims of employees who are in an 944  
employment relationship localized in this state but are 945  
temporarily working in a state other than this state, or those 946  
employees' dependents. 947

**Sec. 4123.30.** Money contributed by ~~the public~~ employers 948  
~~mentioned in division (B) (1) of section 4123.01 of the Revised~~ 949  
~~Code~~ constitutes the "public fund" and the money contributed by 950  
~~private~~ employers ~~mentioned in division (B) (2) of such section~~ 951  
constitutes the "private fund." Each such fund shall be 952  
collected, distributed, and its solvency maintained without 953

regard to or reliance upon the other. Whenever in this chapter 954  
reference is made to the state insurance fund, the reference is 955  
to such two separate funds but such two separate funds and the 956  
net premiums contributed thereto by employers after adjustments 957  
and dividends, except for the amount thereof which is set aside 958  
for the investigation and prevention of industrial accidents and 959  
diseases pursuant to Section 35 of Article II, Ohio 960  
Constitution, any amounts set aside for actuarial services 961  
authorized or required by sections 4123.44 and 4123.47 of the 962  
Revised Code, and any amounts set aside to reinsure the 963  
liability of the respective insurance funds for the following 964  
payments, constitute a trust fund for the benefit of employers 965  
and employees mentioned in sections 4123.01, 4123.03, and 966  
4123.73 of the Revised Code for the payment of compensation, 967  
medical services, examinations, recommendations and 968  
determinations, nursing and hospital services, medicine, 969  
rehabilitation, death benefits, funeral expenses, and like 970  
benefits for loss sustained on account of injury, disease, or 971  
death provided for by this chapter, and for no other purpose. 972  
This section does not prevent the deposit or investment of all 973  
such moneys intermingled for such purpose but such funds shall 974  
be separate and distinct for all other purposes, and the rights 975  
and duties created in this chapter shall be construed to have 976  
been made with respect to two separate funds and so as to 977  
maintain and continue such funds separately except for deposit 978  
or investment. Disbursements shall not be made on account of 979  
injury, disease, or death of employees of employers who 980  
contribute to one of such funds unless the moneys to the credit 981  
of such fund are sufficient therefor and no such disbursements 982  
shall be made for moneys or credits paid or credited to the 983  
other fund. 984

**Sec. 4123.38.** Every public employer ~~mentioned in division~~ 985  
~~(B) (1) of section 4123.01 of the Revised Code,~~ except for boards 986  
of county hospital trustees that are self-insurers under section 987  
4123.35 of the Revised Code, shall contribute to the public 988  
insurance fund the amount of money determined by the 989  
administrator of workers' compensation, and the manner of 990  
determining contributions and the classifications of employers 991  
is as provided in sections 4123.39 to 4123.41 and 4123.48 of the 992  
Revised Code. 993

**Sec. 4123.77.** ~~Employers mentioned in division (B) (2) of~~ 994  
~~section 4123.01 of the Revised Code,~~ Private employers who fail 995  
to comply with section 4123.35 of the Revised Code are not 996  
entitled to the benefits of sections 4123.01 to 4123.94, 997  
inclusive, of the Revised Code, during the period of such 998  
noncompliance, but are liable to their employees for damages 999  
suffered by reason of personal injuries sustained in the course 1000  
of employment caused by the wrongful act, neglect, or default of 1001  
the employer, or any of the employer's officers, agents, or 1002  
employees, and also to the personal representatives of such 1003  
employees where death results from such injuries, and in such 1004  
action the defendant shall not avail ~~himself or itself~~ self of 1005  
the following common law defenses: 1006

(A) The defense of the fellow servant rule; 1007

(B) The defense of the assumption of risk; 1008

(C) The defense of contributory negligence. 1009

Such employers are subject to sections 4123.37 and 4123.75 1010  
of the Revised Code. 1011

**Sec. 4141.01.** As used in this chapter, unless the context 1012  
otherwise requires: 1013

(A) (1) "Employer" means the state, its instrumentalities, 1014  
its political subdivisions and their instrumentalities, Indian 1015  
tribes, and any individual or type of organization including any 1016  
partnership, limited liability company, association, trust, 1017  
estate, joint-stock company, insurance company, or corporation, 1018  
whether domestic or foreign, or the receiver, trustee in 1019  
bankruptcy, trustee, or the successor thereof, or the legal 1020  
representative of a deceased person who subsequent to December 1021  
31, 1971, or in the case of political subdivisions or their 1022  
instrumentalities, subsequent to December 31, 1973: 1023

(a) Had in employment at least one individual, or in the 1024  
case of a nonprofit organization, subsequent to December 31, 1025  
1973, had not less than four individuals in employment for some 1026  
portion of a day in each of twenty different calendar weeks, in 1027  
either the current or the preceding calendar year whether or not 1028  
the same individual was in employment in each such day; or 1029

(b) Except for a nonprofit organization, had paid for 1030  
service in employment wages of fifteen hundred dollars or more 1031  
in any calendar quarter in either the current or preceding 1032  
calendar year; or 1033

(c) Had paid, subsequent to December 31, 1977, for 1034  
employment in domestic service in a local college club, or local 1035  
chapter of a college fraternity or sorority, cash remuneration 1036  
of one thousand dollars or more in any calendar quarter in the 1037  
current calendar year or the preceding calendar year, or had 1038  
paid subsequent to December 31, 1977, for employment in domestic 1039  
service in a private home cash remuneration of one thousand 1040  
dollars in any calendar quarter in the current calendar year or 1041  
the preceding calendar year: 1042

(i) For the purposes of divisions (A) (1) (a) and (b) of 1043

this section, there shall not be taken into account any wages 1044  
paid to, or employment of, an individual performing domestic 1045  
service as described in this division. 1046

(ii) An employer under this division shall not be an 1047  
employer with respect to wages paid for any services other than 1048  
domestic service unless the employer is also found to be an 1049  
employer under division (A) (1) (a), (b), or (d) of this section. 1050

(d) As a farm operator or a crew leader subsequent to 1051  
December 31, 1977, had in employment individuals in agricultural 1052  
labor; and 1053

(i) During any calendar quarter in the current calendar 1054  
year or the preceding calendar year, paid cash remuneration of 1055  
twenty thousand dollars or more for the agricultural labor; or 1056

(ii) Had at least ten individuals in employment in 1057  
agricultural labor, not including agricultural workers who are 1058  
aliens admitted to the United States to perform agricultural 1059  
labor pursuant to sections 1184(c) and 1101(a) (15) (H) of the 1060  
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1061  
1101(a) (15) (H) (ii) (a), 1184(c), for some portion of a day in 1062  
each of the twenty different calendar weeks, in either the 1063  
current or preceding calendar year whether or not the same 1064  
individual was in employment in each day; or 1065

(e) Is not otherwise an employer as defined under division 1066  
(A) (1) (a) or (b) of this section; and 1067

(i) For which, within either the current or preceding 1068  
calendar year, service, except for domestic service in a private 1069  
home not covered under division (A) (1) (c) of this section, is or 1070  
was performed with respect to which such employer is liable for 1071  
any federal tax against which credit may be taken for 1072

contributions required to be paid into a state unemployment fund; 1073  
1074

(ii) Which, as a condition for approval of this chapter for full tax credit against the tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is required, pursuant to such act to be an employer under this chapter; or 1075  
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(iii) Who became an employer by election under division (A) (4) or (5) of this section and for the duration of such election; or 1080  
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(f) In the case of the state, its instrumentalities, its political subdivisions, and their instrumentalities, and Indian tribes, had in employment, as defined in divisions (B) (2) (a) and (B) (2) (1) of this section, at least one individual; 1083  
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(g) For the purposes of division (A) (1) (a) of this section, if any week includes both the thirty-first day of December and the first day of January, the days of that week before the first day of January shall be considered one calendar week and the days beginning the first day of January another week. 1087  
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(2) Each individual employed to perform or to assist in performing the work of any agent or employee of an employer is employed by such employer for all the purposes of this chapter, whether such individual was hired or paid directly by such employer or by such agent or employee, provided the employer had actual or constructive knowledge of the work. All individuals performing services for an employer of any person in this state who maintains two or more establishments within this state are employed by a single employer for the purposes of this chapter. 1093  
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(3) An employer subject to this chapter within any 1102  
calendar year is subject to this chapter during the whole of 1103  
such year and during the next succeeding calendar year. 1104

(4) An employer not otherwise subject to this chapter who 1105  
files with the director of job and family services a written 1106  
election to become an employer subject to this chapter for not 1107  
less than two calendar years shall, with the written approval of 1108  
such election by the director, become an employer subject to 1109  
this chapter to the same extent as all other employers as of the 1110  
date stated in such approval, and shall cease to be subject to 1111  
this chapter as of the first day of January of any calendar year 1112  
subsequent to such two calendar years only if at least thirty 1113  
days prior to such first day of January the employer has filed 1114  
with the director a written notice to that effect. 1115

(5) Any employer for whom services that do not constitute 1116  
employment are performed may file with the director a written 1117  
election that all such services performed by individuals in the 1118  
employer's employ in one or more distinct establishments or 1119  
places of business shall be deemed to constitute employment for 1120  
all the purposes of this chapter, for not less than two calendar 1121  
years. Upon written approval of the election by the director, 1122  
such services shall be deemed to constitute employment subject 1123  
to this chapter from and after the date stated in such approval. 1124  
Such services shall cease to be employment subject to this 1125  
chapter as of the first day of January of any calendar year 1126  
subsequent to such two calendar years only if at least thirty 1127  
days prior to such first day of January such employer has filed 1128  
with the director a written notice to that effect. 1129

(6) "Employer" does not include a franchisor with respect 1130  
to the franchisor's relationship with a franchisee or an 1131

employee of a franchisee, unless the franchisor agrees to assume 1132  
that role in writing or a court of competent jurisdiction 1133  
determines that the franchisor exercises a type or degree of 1134  
control over the franchisee or the franchisee's employees that 1135  
is not customarily exercised by a franchisor for the purpose of 1136  
protecting the franchisor's trademark, brand, or both. For 1137  
purposes of this division, "franchisor" and "franchisee" have 1138  
the same meanings as in 16 C.F.R. 436.1. 1139

(B) (1) "Employment" means service performed by an 1140  
individual for remuneration under any contract of hire, written 1141  
or oral, express or implied, including service performed in 1142  
interstate commerce and service performed by an officer of a 1143  
corporation, without regard to whether such service is 1144  
executive, managerial, or manual in nature, and without regard 1145  
to whether such officer is a stockholder or a member of the 1146  
board of directors of the corporation, unless it is shown to the 1147  
satisfaction of the director that such individual has been and 1148  
will continue to be free from direction or control over the 1149  
performance of such service, both under a contract of service 1150  
and in fact. The director shall adopt rules to define "direction 1151  
or control." 1152

(2) "Employment" includes: 1153

(a) Service performed after December 31, 1977, by an 1154  
individual in the employ of the state or any of its 1155  
instrumentalities, or any political subdivision thereof or any 1156  
of its instrumentalities or any instrumentality of more than one 1157  
of the foregoing or any instrumentality of any of the foregoing 1158  
and one or more other states or political subdivisions and 1159  
without regard to divisions (A) (1) (a) and (b) of this section, 1160  
provided that such service is excluded from employment as 1161

defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 1162  
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 1163  
(3) of this section; or the services of employees covered by 1164  
voluntary election, as provided under divisions (A) (4) and (5) 1165  
of this section; 1166

(b) Service performed after December 31, 1971, by an 1167  
individual in the employ of a religious, charitable, 1168  
educational, or other organization which is excluded from the 1169  
term "employment" as defined in the "Federal Unemployment Tax 1170  
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 1171  
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 1172  
excluded under division (B) (3) of this section; 1173

(c) Domestic service performed after December 31, 1977, 1174  
for an employer, as provided in division (A) (1) (c) of this 1175  
section; 1176

(d) Agricultural labor performed after December 31, 1977, 1177  
for a farm operator or a crew leader, as provided in division 1178  
(A) (1) (d) of this section; 1179

(e) Service not covered under division (B) (1) of this 1180  
section which is performed after December 31, 1971: 1181

(i) As an agent-driver or commission-driver engaged in 1182  
distributing meat products, vegetable products, fruit products, 1183  
bakery products, beverages other than milk, laundry, or dry- 1184  
cleaning services, for the individual's employer or principal; 1185

(ii) As a traveling or city salesperson, other than as an 1186  
agent-driver or commission-driver, engaged on a full-time basis 1187  
in the solicitation on behalf of and in the transmission to the 1188  
salesperson's employer or principal except for sideline sales 1189  
activities on behalf of some other person of orders from 1190

wholesalers, retailers, contractors, or operators of hotels, 1191  
restaurants, or other similar establishments for merchandise for 1192  
resale, or supplies for use in their business operations, 1193  
provided that for the purposes of division (B) (2) (e) (ii) of this 1194  
section, the services shall be deemed employment if the contract 1195  
of service contemplates that substantially all of the services 1196  
are to be performed personally by the individual and that the 1197  
individual does not have a substantial investment in facilities 1198  
used in connection with the performance of the services other 1199  
than in facilities for transportation, and the services are not 1200  
in the nature of a single transaction that is not a part of a 1201  
continuing relationship with the person for whom the services 1202  
are performed. 1203

(f) An individual's entire service performed within or 1204  
both within and without the state if: 1205

(i) The service is localized in this state. 1206

(ii) The service is not localized in any state, but some 1207  
of the service is performed in this state and either the base of 1208  
operations, or if there is no base of operations then the place 1209  
from which such service is directed or controlled, is in this 1210  
state or the base of operations or place from which such service 1211  
is directed or controlled is not in any state in which some part 1212  
of the service is performed but the individual's residence is in 1213  
this state. 1214

(g) Service not covered under division (B) (2) (f) (ii) of 1215  
this section and performed entirely without this state, with 1216  
respect to no part of which contributions are required and paid 1217  
under an unemployment compensation law of any other state, the 1218  
Virgin Islands, Canada, or of the United States, if the 1219  
individual performing such service is a resident of this state 1220

and the director approves the election of the employer for whom 1221  
such services are performed; or, if the individual is not a 1222  
resident of this state but the place from which the service is 1223  
directed or controlled is in this state, the entire services of 1224  
such individual shall be deemed to be employment subject to this 1225  
chapter, provided service is deemed to be localized within this 1226  
state if the service is performed entirely within this state or 1227  
if the service is performed both within and without this state 1228  
but the service performed without this state is incidental to 1229  
the individual's service within the state, for example, is 1230  
temporary or transitory in nature or consists of isolated 1231  
transactions; 1232

(h) Service of an individual who is a citizen of the 1233  
United States, performed outside the United States except in 1234  
Canada after December 31, 1971, or the Virgin Islands, after 1235  
December 31, 1971, and before the first day of January of the 1236  
year following that in which the United States secretary of 1237  
labor approves the Virgin Islands law for the first time, in the 1238  
employ of an American employer, other than service which is 1239  
"employment" under divisions (B) (2) (f) and (g) of this section 1240  
or similar provisions of another state's law, if: 1241

(i) The employer's principal place of business in the 1242  
United States is located in this state; 1243

(ii) The employer has no place of business in the United 1244  
States, but the employer is an individual who is a resident of 1245  
this state; or the employer is a corporation which is organized 1246  
under the laws of this state, or the employer is a partnership 1247  
or a trust and the number of partners or trustees who are 1248  
residents of this state is greater than the number who are 1249  
residents of any other state; or 1250

(iii) None of the criteria of divisions (B) (2) (f) (i) and 1251  
(ii) of this section is met but the employer has elected 1252  
coverage in this state or the employer having failed to elect 1253  
coverage in any state, the individual has filed a claim for 1254  
benefits, based on such service, under this chapter. 1255

(i) For the purposes of division (B) (2) (h) of this 1256  
section, the term "American employer" means an employer who is 1257  
an individual who is a resident of the United States; or a 1258  
partnership, if two-thirds or more of the partners are residents 1259  
of the United States; or a trust, if all of the trustees are 1260  
residents of the United States; or a corporation organized under 1261  
the laws of the United States or of any state, provided the term 1262  
"United States" includes the states, the District of Columbia, 1263  
the Commonwealth of Puerto Rico, and the Virgin Islands. 1264

(j) Notwithstanding any other provisions of divisions (B) 1265  
(1) and (2) of this section, service, except for domestic 1266  
service in a private home not covered under division (A) (1) (c) 1267  
of this section, with respect to which a tax is required to be 1268  
paid under any federal law imposing a tax against which credit 1269  
may be taken for contributions required to be paid into a state 1270  
unemployment fund, or service, except for domestic service in a 1271  
private home not covered under division (A) (1) (c) of this 1272  
section, which, as a condition for full tax credit against the 1273  
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 1274  
26 U.S.C.A. 3301 to 3311, is required to be covered under this 1275  
chapter. 1276

(k) Construction services performed by any individual 1277  
under a construction contract, as defined in section 4141.39 of 1278  
the Revised Code, if the director determines that the employer 1279  
for whom services are performed has the right to direct or 1280

control the performance of the services and that the individuals 1281  
who perform the services receive remuneration for the services 1282  
performed. The director shall presume that the employer for whom 1283  
services are performed has the right to direct or control the 1284  
performance of the services if ten or more of the following 1285  
criteria apply: 1286

(i) The employer directs or controls the manner or method 1287  
by which instructions are given to the individual performing 1288  
services; 1289

(ii) The employer requires particular training for the 1290  
individual performing services; 1291

(iii) Services performed by the individual are integrated 1292  
into the regular functioning of the employer; 1293

(iv) The employer requires that services be provided by a 1294  
particular individual; 1295

(v) The employer hires, supervises, or pays the wages of 1296  
the individual performing services; 1297

(vi) A continuing relationship between the employer and 1298  
the individual performing services exists which contemplates 1299  
continuing or recurring work, even if not full-time work; 1300

(vii) The employer requires the individual to perform 1301  
services during established hours; 1302

(viii) The employer requires that the individual 1303  
performing services be devoted on a full-time basis to the 1304  
business of the employer; 1305

(ix) The employer requires the individual to perform 1306  
services on the employer's premises; 1307

- (x) The employer requires the individual performing services to follow the order of work established by the employer; 1308  
1309  
1310
- (xi) The employer requires the individual performing services to make oral or written reports of progress; 1311  
1312
- (xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly; 1313  
1314
- (xiii) The employer pays expenses for the individual performing services; 1315  
1316
- (xiv) The employer furnishes the tools and materials for use by the individual to perform services; 1317  
1318
- (xv) The individual performing services has not invested in the facilities used to perform services; 1319  
1320
- (xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services; 1321  
1322  
1323
- (xvii) The individual performing services is not performing services for more than two employers simultaneously; 1324  
1325
- (xviii) The individual performing services does not make the services available to the general public; 1326  
1327
- (xix) The employer has a right to discharge the individual performing services; 1328  
1329
- (xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement. 1330  
1331  
1332  
1333
- (1) Service performed by an individual in the employ of an 1334

Indian tribe as defined by section 4(e) of the "Indian Self- 1335  
Determination and Education Assistance Act," 88 Stat. 2204 1336  
(1975), 25 U.S.C.A. 450b(e), including any subdivision, 1337  
subsidiary, or business enterprise wholly owned by an Indian 1338  
tribe provided that the service is excluded from employment as 1339  
defined in the "Federal Unemployment Tax Act," 53 Stat. 183 1340  
(1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded 1341  
under division (B)(3) of this section. 1342

(3) "Employment" does not include the following services 1343  
if they are found not subject to the "Federal Unemployment Tax 1344  
Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the 1345  
services are not required to be included under division (B)(2) 1346  
(j) of this section: 1347

(a) Service performed after December 31, 1977, in 1348  
agricultural labor, except as provided in division (A)(1)(d) of 1349  
this section; 1350

(b) Domestic service performed after December 31, 1977, in 1351  
a private home, local college club, or local chapter of a 1352  
college fraternity or sorority except as provided in division 1353  
(A)(1)(c) of this section; 1354

(c) Service performed after December 31, 1977, for this 1355  
state or a political subdivision as described in division (B)(2) 1356  
(a) of this section when performed: 1357

(i) As a publicly elected official; 1358

(ii) As a member of a legislative body, or a member of the 1359  
judiciary; 1360

(iii) As a military member of the Ohio national guard; 1361

(iv) As an employee, not in the classified service as 1362

defined in section 124.11 of the Revised Code, serving on a 1363  
temporary basis in case of fire, storm, snow, earthquake, flood, 1364  
or similar emergency; 1365

(v) In a position which, under or pursuant to law, is 1366  
designated as a major nontenured policymaking or advisory 1367  
position, not in the classified service of the state, or a 1368  
policymaking or advisory position the performance of the duties 1369  
of which ordinarily does not require more than eight hours per 1370  
week. 1371

(d) In the employ of any governmental unit or 1372  
instrumentality of the United States; 1373

(e) Service performed after December 31, 1971: 1374

(i) Service in the employ of an educational institution or 1375  
institution of higher education, including those operated by the 1376  
state or a political subdivision, if such service is performed 1377  
by a student who is enrolled and is regularly attending classes 1378  
at the educational institution or institution of higher 1379  
education; or 1380

(ii) By an individual who is enrolled at a nonprofit or 1381  
public educational institution which normally maintains a 1382  
regular faculty and curriculum and normally has a regularly 1383  
organized body of students in attendance at the place where its 1384  
educational activities are carried on as a student in a full- 1385  
time program, taken for credit at the institution, which 1386  
combines academic instruction with work experience, if the 1387  
service is an integral part of the program, and the institution 1388  
has so certified to the employer, provided that this subdivision 1389  
shall not apply to service performed in a program established 1390  
for or on behalf of an employer or group of employers. 1391

(f) Service performed by an individual in the employ of 1392  
the individual's son, daughter, or spouse and service performed 1393  
by a child under the age of eighteen in the employ of the 1394  
child's father or mother; 1395

(g) Service performed for one or more principals by an 1396  
individual who is compensated on a commission basis, who in the 1397  
performance of the work is master of the individual's own time 1398  
and efforts, and whose remuneration is wholly dependent on the 1399  
amount of effort the individual chooses to expend, and which 1400  
service is not subject to the "Federal Unemployment Tax Act," 53 1401  
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 1402  
after December 31, 1971: 1403

(i) By an individual for an employer as an insurance agent 1404  
or as an insurance solicitor, if all this service is performed 1405  
for remuneration solely by way of commission; 1406

(ii) As a home worker performing work, according to 1407  
specifications furnished by the employer for whom the services 1408  
are performed, on materials or goods furnished by such employer 1409  
which are required to be returned to the employer or to a person 1410  
designated for that purpose. 1411

(h) Service performed after December 31, 1971: 1412

(i) In the employ of a church or convention or association 1413  
of churches, or in an organization which is operated primarily 1414  
for religious purposes and which is operated, supervised, 1415  
controlled, or principally supported by a church or convention 1416  
or association of churches; 1417

(ii) By a duly ordained, commissioned, or licensed 1418  
minister of a church in the exercise of the individual's 1419  
ministry or by a member of a religious order in the exercise of 1420

duties required by such order; or 1421

(iii) In a facility conducted for the purpose of carrying 1422  
out a program of rehabilitation for individuals whose earning 1423  
capacity is impaired by age or physical or mental deficiency or 1424  
injury, or providing remunerative work for individuals who 1425  
because of their impaired physical or mental capacity cannot be 1426  
readily absorbed in the competitive labor market, by an 1427  
individual receiving such rehabilitation or remunerative work. 1428

(i) Service performed after June 30, 1939, with respect to 1429  
which unemployment compensation is payable under the "Railroad 1430  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 1431  
351; 1432

(j) Service performed by an individual in the employ of 1433  
any organization exempt from income tax under section 501 of the 1434  
"Internal Revenue Code of 1954," if the remuneration for such 1435  
service does not exceed fifty dollars in any calendar quarter, 1436  
or if such service is in connection with the collection of dues 1437  
or premiums for a fraternal beneficial society, order, or 1438  
association and is performed away from the home office or is 1439  
ritualistic service in connection with any such society, order, 1440  
or association; 1441

(k) Casual labor not in the course of an employer's trade 1442  
or business; incidental service performed by an officer, 1443  
appraiser, or member of a finance committee of a bank, building 1444  
and loan association, savings and loan association, or savings 1445  
association when the remuneration for such incidental service 1446  
exclusive of the amount paid or allotted for directors' fees 1447  
does not exceed sixty dollars per calendar quarter is casual 1448  
labor; 1449

(l) Service performed in the employ of a voluntary 1450  
employees' beneficial association providing for the payment of 1451  
life, sickness, accident, or other benefits to the members of 1452  
such association or their dependents or their designated 1453  
beneficiaries, if admission to a membership in such association 1454  
is limited to individuals who are officers or employees of a 1455  
municipal or public corporation, of a political subdivision of 1456  
the state, or of the United States and no part of the net 1457  
earnings of such association inures, other than through such 1458  
payments, to the benefit of any private shareholder or 1459  
individual; 1460

(m) Service performed by an individual in the employ of a 1461  
foreign government, including service as a consular or other 1462  
officer or employee or of a nondiplomatic representative; 1463

(n) Service performed in the employ of an instrumentality 1464  
wholly owned by a foreign government if the service is of a 1465  
character similar to that performed in foreign countries by 1466  
employees of the United States or of an instrumentality thereof 1467  
and if the director finds that the secretary of state of the 1468  
United States has certified to the secretary of the treasury of 1469  
the United States that the foreign government, with respect to 1470  
whose instrumentality exemption is claimed, grants an equivalent 1471  
exemption with respect to similar service performed in the 1472  
foreign country by employees of the United States and of 1473  
instrumentalities thereof; 1474

(o) Service with respect to which unemployment 1475  
compensation is payable under an unemployment compensation 1476  
system established by an act of congress; 1477

(p) Service performed as a student nurse in the employ of 1478  
a hospital or a nurses' training school by an individual who is 1479

enrolled and is regularly attending classes in a nurses' 1480  
training school chartered or approved pursuant to state law, and 1481  
service performed as an intern in the employ of a hospital by an 1482  
individual who has completed a four years' course in a medical 1483  
school chartered or approved pursuant to state law; 1484

(q) Service performed by an individual under the age of 1485  
eighteen in the delivery or distribution of newspapers or 1486  
shopping news, not including delivery or distribution to any 1487  
point for subsequent delivery or distribution; 1488

(r) Service performed in the employ of the United States 1489  
or an instrumentality of the United States immune under the 1490  
Constitution of the United States from the contributions imposed 1491  
by this chapter, except that to the extent that congress permits 1492  
states to require any instrumentalities of the United States to 1493  
make payments into an unemployment fund under a state 1494  
unemployment compensation act, this chapter shall be applicable 1495  
to such instrumentalities and to services performed for such 1496  
instrumentalities in the same manner, to the same extent, and on 1497  
the same terms as to all other employers, individuals, and 1498  
services, provided that if this state is not certified for any 1499  
year by the proper agency of the United States under section 1500  
3304 of the "Internal Revenue Code of 1954," the payments 1501  
required of such instrumentalities with respect to such year 1502  
shall be refunded by the director from the fund in the same 1503  
manner and within the same period as is provided in division (E) 1504  
of section 4141.09 of the Revised Code with respect to 1505  
contributions erroneously collected; 1506

(s) Service performed by an individual as a member of a 1507  
band or orchestra, provided such service does not represent the 1508  
principal occupation of such individual, and which service is 1509

not subject to or required to be covered for full tax credit 1510  
against the tax imposed by the "Federal Unemployment Tax Act," 1511  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1512

(t) Service performed in the employ of a day camp whose 1513  
camping season does not exceed twelve weeks in any calendar 1514  
year, and which service is not subject to the "Federal 1515  
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1516  
3311. Service performed after December 31, 1971: 1517

(i) In the employ of a hospital, if the service is 1518  
performed by a patient of the hospital, as defined in division 1519  
(W) of this section; 1520

(ii) For a prison or other correctional institution by an 1521  
inmate of the prison or correctional institution; 1522

(iii) Service performed after December 31, 1977, by an 1523  
inmate of a custodial institution operated by the state, a 1524  
political subdivision, or a nonprofit organization. 1525

(u) Service that is performed by a nonresident alien 1526  
individual for the period the individual temporarily is present 1527  
in the United States as a nonimmigrant under division (F), (J), 1528  
(M), or (Q) of section 101(a)(15) of the "Immigration and 1529  
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, 1530  
that is excluded under section 3306(c)(19) of the "Federal 1531  
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 1532  
3311. 1533

(v) Notwithstanding any other provisions of division (B) 1534  
(3) of this section, services that are excluded under divisions 1535  
(B)(3)(g), (j), (k), and (l) of this section shall not be 1536  
excluded from employment when performed for a nonprofit 1537  
organization, as defined in division (X) of this section, or for 1538

this state or its instrumentalities, or for a political 1539  
subdivision or its instrumentalities or for Indian tribes; 1540

(w) Service that is performed by an individual working as 1541  
an election official or election worker if the amount of 1542  
remuneration received by the individual during the calendar year 1543  
for services as an election official or election worker is less 1544  
than one thousand dollars; 1545

(x) Service performed for an elementary or secondary 1546  
school that is operated primarily for religious purposes, that 1547  
is described in subsection 501(c)(3) and exempt from federal 1548  
income taxation under subsection 501(a) of the Internal Revenue 1549  
Code, 26 U.S.C.A. 501; 1550

(y) Service performed by a person committed to a penal 1551  
institution. 1552

(z) Service performed for an Indian tribe as described in 1553  
division (B)(2)(1) of this section when performed in any of the 1554  
following manners: 1555

(i) As a publicly elected official; 1556

(ii) As a member of an Indian tribal council; 1557

(iii) As a member of a legislative or judiciary body; 1558

(iv) In a position which, pursuant to Indian tribal law, 1559  
is designated as a major nontenured policymaking or advisory 1560  
position, or a policymaking or advisory position where the 1561  
performance of the duties ordinarily does not require more than 1562  
eight hours of time per week; 1563

(v) As an employee serving on a temporary basis in the 1564  
case of a fire, storm, snow, earthquake, flood, or similar 1565  
emergency. 1566

(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.

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

(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.

(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.

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

the maximum benefit amount that may become payable to an 1597  
individual within the individual's benefit year as determined by 1598  
the director. 1599

(E) "Claim for benefits" means a claim for waiting period 1600  
or benefits for a designated week. 1601

(F) "Additional claim" means the first claim for benefits 1602  
filed following any separation from employment during a benefit 1603  
year; "continued claim" means any claim other than the first 1604  
claim for benefits and other than an additional claim. 1605

(G) "Wages" means remuneration paid to an employee by each 1606  
of the employee's employers with respect to employment; except 1607  
that wages shall not include that part of remuneration paid 1608  
during any calendar year to an individual by an employer or such 1609  
employer's predecessor in interest in the same business or 1610  
enterprise, which in any calendar year is in excess of nine 1611  
thousand dollars on and after January 1, 1995; nine thousand 1612  
five hundred dollars on and after January 1, 2018; and nine 1613  
thousand dollars on and after January 1, 2020. Remuneration in 1614  
excess of such amounts shall be deemed wages subject to 1615  
contribution to the same extent that such remuneration is 1616  
defined as wages under the "Federal Unemployment Tax Act," 84 1617  
Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as amended. The 1618  
remuneration paid an employee by an employer with respect to 1619  
employment in another state, upon which contributions were 1620  
required and paid by such employer under the unemployment 1621  
compensation act of such other state, shall be included as a 1622  
part of remuneration in computing the amount specified in this 1623  
division. 1624

(H) (1) "Remuneration" means all compensation for personal 1625  
services, including commissions and bonuses and the cash value 1626

of all compensation in any medium other than cash, except that 1627  
in the case of agricultural or domestic service, "remuneration" 1628  
includes only cash remuneration. Gratuities customarily received 1629  
by an individual in the course of the individual's employment 1630  
from persons other than the individual's employer and which are 1631  
accounted for by such individual to the individual's employer 1632  
are taxable wages. 1633

The reasonable cash value of compensation paid in any 1634  
medium other than cash shall be estimated and determined in 1635  
accordance with rules prescribed by the director, provided that 1636  
"remuneration" does not include: 1637

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1638  
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1639  
713, 26 U.S.C.A. 3301 to 3311, as amended; 1640

(b) The payment by an employer, without deduction from the 1641  
remuneration of the individual in the employer's employ, of the 1642  
tax imposed upon an individual in the employer's employ under 1643  
section 3101 of the "Internal Revenue Code of 1954," with 1644  
respect to services performed after October 1, 1941. 1645

(2) "Cash remuneration" means all remuneration paid in 1646  
cash, including commissions and bonuses, but not including the 1647  
cash value of all compensation in any medium other than cash. 1648

(I) "Interested party" means the director and any party to 1649  
whom notice of a determination of an application for benefit 1650  
rights or a claim for benefits is required to be given under 1651  
section 4141.28 of the Revised Code. 1652

(J) "Annual payroll" means the total amount of wages 1653  
subject to contributions during a twelve-month period ending 1654  
with the last day of the second calendar quarter of any calendar 1655

year. 1656

(K) "Average annual payroll" means the average of the last 1657  
three annual payrolls of an employer, provided that if, as of 1658  
any computation date, the employer has had less than three 1659  
annual payrolls in such three-year period, such average shall be 1660  
based on the annual payrolls which the employer has had as of 1661  
such date. 1662

(L) (1) "Contributions" means the money payments to the 1663  
state unemployment compensation fund required of employers by 1664  
section 4141.25 of the Revised Code and of the state and any of 1665  
its political subdivisions electing to pay contributions under 1666  
section 4141.242 of the Revised Code. Employers paying 1667  
contributions shall be described as "contributory employers." 1668

(2) "Payments in lieu of contributions" means the money 1669  
payments to the state unemployment compensation fund required of 1670  
reimbursing employers under sections 4141.241 and 4141.242 of 1671  
the Revised Code. 1672

(M) An individual is "totally unemployed" in any week 1673  
during which the individual performs no services and with 1674  
respect to such week no remuneration is payable to the 1675  
individual. 1676

(N) An individual is "partially unemployed" in any week 1677  
if, due to involuntary loss of work, the total remuneration 1678  
payable to the individual for such week is less than the 1679  
individual's weekly benefit amount. 1680

(O) "Week" means the calendar week ending at midnight 1681  
Saturday unless an equivalent week of seven consecutive calendar 1682  
days is prescribed by the director. 1683

(1) "Qualifying week" means any calendar week in an 1684

individual's base period with respect to which the individual 1685  
earns or is paid remuneration in employment subject to this 1686  
chapter. A calendar week with respect to which an individual 1687  
earns remuneration but for which payment was not made within the 1688  
base period, when necessary to qualify for benefit rights, may 1689  
be considered to be a qualifying week. The number of qualifying 1690  
weeks which may be established in a calendar quarter shall not 1691  
exceed the number of calendar weeks in the quarter. 1692

(2) "Average weekly wage" means the amount obtained by 1693  
dividing an individual's total remuneration for all qualifying 1694  
weeks during the base period by the number of such qualifying 1695  
weeks, provided that if the computation results in an amount 1696  
that is not a multiple of one dollar, such amount shall be 1697  
rounded to the next lower multiple of one dollar. 1698

(P) "Weekly benefit amount" means the amount of benefits 1699  
an individual would be entitled to receive for one week of total 1700  
unemployment. 1701

(Q) (1) "Base period" means the first four of the last five 1702  
completed calendar quarters immediately preceding the first day 1703  
of an individual's benefit year, except as provided in division 1704  
(Q) (2) of this section. 1705

(2) If an individual does not have sufficient qualifying 1706  
weeks and wages in the base period to qualify for benefit 1707  
rights, the individual's base period shall be the four most 1708  
recently completed calendar quarters preceding the first day of 1709  
the individual's benefit year. Such base period shall be known 1710  
as the "alternate base period." If information as to weeks and 1711  
wages for the most recent quarter of the alternate base period 1712  
is not available to the director from the regular quarterly 1713  
reports of wage information, which are systematically 1714

accessible, the director may, consistent with the provisions of 1715  
section 4141.28 of the Revised Code, base the determination of 1716  
eligibility for benefits on the affidavit of the claimant with 1717  
respect to weeks and wages for that calendar quarter. The 1718  
claimant shall furnish payroll documentation, where available, 1719  
in support of the affidavit. The determination based upon the 1720  
alternate base period as it relates to the claimant's benefit 1721  
rights, shall be amended when the quarterly report of wage 1722  
information from the employer is timely received and that 1723  
information causes a change in the determination. As provided in 1724  
division (B) of section 4141.28 of the Revised Code, any 1725  
benefits paid and charged to an employer's account, based upon a 1726  
claimant's affidavit, shall be adjusted effective as of the 1727  
beginning of the claimant's benefit year. No calendar quarter in 1728  
a base period or alternate base period shall be used to 1729  
establish a subsequent benefit year. 1730

(3) The "base period" of a combined wage claim, as 1731  
described in division (H) of section 4141.43 of the Revised 1732  
Code, shall be the base period prescribed by the law of the 1733  
state in which the claim is allowed. 1734

(4) For purposes of determining the weeks that comprise a 1735  
completed calendar quarter under this division, only those weeks 1736  
ending at midnight Saturday within the calendar quarter shall be 1737  
utilized. 1738

(R) (1) "Benefit year" with respect to an individual means 1739  
the fifty-two week period beginning with the first day of that 1740  
week with respect to which the individual first files a valid 1741  
application for determination of benefit rights, and thereafter 1742  
the fifty-two week period beginning with the first day of that 1743  
week with respect to which the individual next files a valid 1744

application for determination of benefit rights after the 1745  
termination of the individual's last preceding benefit year, 1746  
except that the application shall not be considered valid unless 1747  
the individual has had employment in six weeks that is subject 1748  
to this chapter or the unemployment compensation act of another 1749  
state, or the United States, and has, since the beginning of the 1750  
individual's previous benefit year, in the employment earned 1751  
three times the average weekly wage determined for the previous 1752  
benefit year. The "benefit year" of a combined wage claim, as 1753  
described in division (H) of section 4141.43 of the Revised 1754  
Code, shall be the benefit year prescribed by the law of the 1755  
state in which the claim is allowed. Any application for 1756  
determination of benefit rights made in accordance with section 1757  
4141.28 of the Revised Code is valid if the individual filing 1758  
such application is unemployed, has been employed by an employer 1759  
or employers subject to this chapter in at least twenty 1760  
qualifying weeks within the individual's base period, and has 1761  
earned or been paid remuneration at an average weekly wage of 1762  
not less than twenty-seven and one-half per cent of the 1763  
statewide average weekly wage for such weeks. For purposes of 1764  
determining whether an individual has had sufficient employment 1765  
since the beginning of the individual's previous benefit year to 1766  
file a valid application, "employment" means the performance of 1767  
services for which remuneration is payable. 1768

(2) Effective for benefit years beginning on and after 1769  
December 26, 2004, any application for determination of benefit 1770  
rights made in accordance with section 4141.28 of the Revised 1771  
Code is valid if the individual satisfies the criteria described 1772  
in division (R) (1) of this section, and if the reason for the 1773  
individual's separation from employment is not disqualifying 1774  
pursuant to division (D) (2) of section 4141.29 or section 1775

4141.291 of the Revised Code. A disqualification imposed 1776  
pursuant to division (D) (2) of section 4141.29 or section 1777  
4141.291 of the Revised Code must be removed as provided in 1778  
those sections as a requirement of establishing a valid 1779  
application for benefit years beginning on and after December 1780  
26, 2004. 1781

(3) The statewide average weekly wage shall be calculated 1782  
by the director once a year based on the twelve-month period 1783  
ending the thirtieth day of June, as set forth in division (B) 1784  
(3) of section 4141.30 of the Revised Code, rounded down to the 1785  
nearest dollar. Increases or decreases in the amount of 1786  
remuneration required to have been earned or paid in order for 1787  
individuals to have filed valid applications shall become 1788  
effective on Sunday of the calendar week in which the first day 1789  
of January occurs that follows the twelve-month period ending 1790  
the thirtieth day of June upon which the calculation of the 1791  
statewide average weekly wage was based. 1792

(4) As used in this division, an individual is 1793  
"unemployed" if, with respect to the calendar week in which such 1794  
application is filed, the individual is "partially unemployed" 1795  
or "totally unemployed" as defined in this section or if, prior 1796  
to filing the application, the individual was separated from the 1797  
individual's most recent work for any reason which terminated 1798  
the individual's employee-employer relationship, or was laid off 1799  
indefinitely or for a definite period of seven or more days. 1800

(S) "Calendar quarter" means the period of three 1801  
consecutive calendar months ending on the thirty-first day of 1802  
March, the thirtieth day of June, the thirtieth day of 1803  
September, and the thirty-first day of December, or the 1804  
equivalent thereof as the director prescribes by rule. 1805

(T) "Computation date" means the first day of the third 1806  
calendar quarter of any calendar year. 1807

(U) "Contribution period" means the calendar year 1808  
beginning on the first day of January of any year. 1809

(V) "Agricultural labor," for the purpose of this 1810  
division, means any service performed prior to January 1, 1972, 1811  
which was agricultural labor as defined in this division prior 1812  
to that date, and service performed after December 31, 1971: 1813

(1) On a farm, in the employ of any person, in connection 1814  
with cultivating the soil, or in connection with raising or 1815  
harvesting any agricultural or horticultural commodity, 1816  
including the raising, shearing, feeding, caring for, training, 1817  
and management of livestock, bees, poultry, and fur-bearing 1818  
animals and wildlife; 1819

(2) In the employ of the owner or tenant or other operator 1820  
of a farm in connection with the operation, management, 1821  
conservation, improvement, or maintenance of such farm and its 1822  
tools and equipment, or in salvaging timber or clearing land of 1823  
brush and other debris left by hurricane, if the major part of 1824  
such service is performed on a farm; 1825

(3) In connection with the production or harvesting of any 1826  
commodity defined as an agricultural commodity in section 15 (g) 1827  
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1828  
U.S.C. 1141j, as amended, or in connection with the ginning of 1829  
cotton, or in connection with the operation or maintenance of 1830  
ditches, canals, reservoirs, or waterways, not owned or operated 1831  
for profit, used exclusively for supplying and storing water for 1832  
farming purposes; 1833

(4) In the employ of the operator of a farm in handling, 1834

planting, drying, packing, packaging, processing, freezing, 1835  
grading, storing, or delivering to storage or to market or to a 1836  
carrier for transportation to market, in its unmanufactured 1837  
state, any agricultural or horticultural commodity, but only if 1838  
the operator produced more than one half of the commodity with 1839  
respect to which such service is performed; 1840

(5) In the employ of a group of operators of farms, or a 1841  
cooperative organization of which the operators are members, in 1842  
the performance of service described in division (V) (4) of this 1843  
section, but only if the operators produced more than one-half 1844  
of the commodity with respect to which the service is performed; 1845

(6) Divisions (V) (4) and (5) of this section shall not be 1846  
deemed to be applicable with respect to service performed: 1847

(a) In connection with commercial canning or commercial 1848  
freezing or in connection with any agricultural or horticultural 1849  
commodity after its delivery to a terminal market for 1850  
distribution for consumption; or 1851

(b) On a farm operated for profit if the service is not in 1852  
the course of the employer's trade or business. 1853

As used in division (V) of this section, "farm" includes 1854  
stock, dairy, poultry, fruit, fur-bearing animal, and truck 1855  
farms, plantations, ranches, nurseries, ranges, greenhouses, or 1856  
other similar structures used primarily for the raising of 1857  
agricultural or horticultural commodities and orchards. 1858

(W) "Hospital" means an institution which has been 1859  
registered or licensed by the Ohio department of health as a 1860  
hospital. 1861

(X) "Nonprofit organization" means an organization, or 1862  
group of organizations, described in section 501(c) (3) of the 1863

"Internal Revenue Code of 1954," and exempt from income tax 1864  
under section 501(a) of that code. 1865

(Y) "Institution of higher education" means a public or 1866  
nonprofit educational institution, including an educational 1867  
institution operated by an Indian tribe, which: 1868

(1) Admits as regular students only individuals having a 1869  
certificate of graduation from a high school, or the recognized 1870  
equivalent; 1871

(2) Is legally authorized in this state or by the Indian 1872  
tribe to provide a program of education beyond high school; and 1873

(3) Provides an educational program for which it awards a 1874  
bachelor's or higher degree, or provides a program which is 1875  
acceptable for full credit toward such a degree, a program of 1876  
post-graduate or post-doctoral studies, or a program of training 1877  
to prepare students for gainful employment in a recognized 1878  
occupation. 1879

For the purposes of this division, all colleges and 1880  
universities in this state are institutions of higher education. 1881

(Z) For the purposes of this chapter, "states" includes 1882  
the District of Columbia, the Commonwealth of Puerto Rico, and 1883  
the Virgin Islands. 1884

(AA) "Alien" means, for the purposes of division (A) (1) (d) 1885  
of this section, an individual who is an alien admitted to the 1886  
United States to perform service in agricultural labor pursuant 1887  
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 1888  
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1889

(BB) (1) "Crew leader" means an individual who furnishes 1890  
individuals to perform agricultural labor for any other employer 1891

or farm operator, and: 1892

(a) Pays, either on the individual's own behalf or on 1893  
behalf of the other employer or farm operator, the individuals 1894  
so furnished by the individual for the service in agricultural 1895  
labor performed by them; 1896

(b) Has not entered into a written agreement with the 1897  
other employer or farm operator under which the agricultural 1898  
worker is designated as in the employ of the other employer or 1899  
farm operator. 1900

(2) For the purposes of this chapter, any individual who 1901  
is a member of a crew furnished by a crew leader to perform 1902  
service in agricultural labor for any other employer or farm 1903  
operator shall be treated as an employee of the crew leader if: 1904

(a) The crew leader holds a valid certificate of 1905  
registration under the "Farm Labor Contractor Registration Act 1906  
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 1907

(b) Substantially all the members of the crew operate or 1908  
maintain tractors, mechanized harvesting or crop-dusting 1909  
equipment, or any other mechanized equipment, which is provided 1910  
by the crew leader; and 1911

(c) If the individual is not in the employment of the 1912  
other employer or farm operator within the meaning of division 1913  
(B)(1) of this section. 1914

(3) For the purposes of this division, any individual who 1915  
is furnished by a crew leader to perform service in agricultural 1916  
labor for any other employer or farm operator and who is not 1917  
treated as in the employment of the crew leader under division 1918  
(BB)(2) of this section shall be treated as the employee of the 1919  
other employer or farm operator and not of the crew leader. The 1920

other employer or farm operator shall be treated as having paid 1921  
cash remuneration to the individual in an amount equal to the 1922  
amount of cash remuneration paid to the individual by the crew 1923  
leader, either on the crew leader's own behalf or on behalf of 1924  
the other employer or farm operator, for the service in 1925  
agricultural labor performed for the other employer or farm 1926  
operator. 1927

(CC) "Educational institution" means an institution other 1928  
than an institution of higher education as defined in division 1929  
(Y) of this section, including an educational institution 1930  
operated by an Indian tribe, which: 1931

(1) Offers participants, trainees, or students an 1932  
organized course of study or training designed to transfer to 1933  
them knowledge, skills, information, doctrines, attitudes, or 1934  
abilities from, by, or under the guidance of an instructor or 1935  
teacher; and 1936

(2) Is approved, chartered, or issued a permit to operate 1937  
as a school by the state board of education, other government 1938  
agency, or Indian tribe that is authorized within the state to 1939  
approve, charter, or issue a permit for the operation of a 1940  
school. 1941

For the purposes of this division, the courses of study or 1942  
training which the institution offers may be academic, 1943  
technical, trade, or preparation for gainful employment in a 1944  
recognized occupation. 1945

(DD) "Cost savings day" means any unpaid day off from work 1946  
in which employees continue to accrue employee benefits which 1947  
have a determinable value including, but not limited to, 1948  
vacation, pension contribution, sick time, and life and health 1949

insurance. 1950

**Sec. 5747.01.** Except as otherwise expressly provided or 1951  
clearly appearing from the context, any term used in this 1952  
chapter that is not otherwise defined in this section has the 1953  
same meaning as when used in a comparable context in the laws of 1954  
the United States relating to federal income taxes or if not 1955  
used in a comparable context in those laws, has the same meaning 1956  
as in section 5733.40 of the Revised Code. Any reference in this 1957  
chapter to the Internal Revenue Code includes other laws of the 1958  
United States relating to federal income taxes. 1959

As used in this chapter: 1960

(A) "Adjusted gross income" or "Ohio adjusted gross 1961  
income" means federal adjusted gross income, as defined and used 1962  
in the Internal Revenue Code, adjusted as provided in this 1963  
section: 1964

(1) Add interest or dividends on obligations or securities 1965  
of any state or of any political subdivision or authority of any 1966  
state, other than this state and its subdivisions and 1967  
authorities. 1968

(2) Add interest or dividends on obligations of any 1969  
authority, commission, instrumentality, territory, or possession 1970  
of the United States to the extent that the interest or 1971  
dividends are exempt from federal income taxes but not from 1972  
state income taxes. 1973

(3) Deduct interest or dividends on obligations of the 1974  
United States and its territories and possessions or of any 1975  
authority, commission, or instrumentality of the United States 1976  
to the extent that the interest or dividends are included in 1977  
federal adjusted gross income but exempt from state income taxes 1978

under the laws of the United States. 1979

(4) Deduct disability and survivor's benefits to the 1980  
extent included in federal adjusted gross income. 1981

(5) Deduct benefits under Title II of the Social Security 1982  
Act and tier 1 railroad retirement benefits to the extent 1983  
included in federal adjusted gross income under section 86 of 1984  
the Internal Revenue Code. 1985

(6) In the case of a taxpayer who is a beneficiary of a 1986  
trust that makes an accumulation distribution as defined in 1987  
section 665 of the Internal Revenue Code, add, for the 1988  
beneficiary's taxable years beginning before 2002, the portion, 1989  
if any, of such distribution that does not exceed the 1990  
undistributed net income of the trust for the three taxable 1991  
years preceding the taxable year in which the distribution is 1992  
made to the extent that the portion was not included in the 1993  
trust's taxable income for any of the trust's taxable years 1994  
beginning in 2002 or thereafter. "Undistributed net income of a 1995  
trust" means the taxable income of the trust increased by (a) (i) 1996  
the additions to adjusted gross income required under division 1997  
(A) of this section and (ii) the personal exemptions allowed to 1998  
the trust pursuant to section 642(b) of the Internal Revenue 1999  
Code, and decreased by (b) (i) the deductions to adjusted gross 2000  
income required under division (A) of this section, (ii) the 2001  
amount of federal income taxes attributable to such income, and 2002  
(iii) the amount of taxable income that has been included in the 2003  
adjusted gross income of a beneficiary by reason of a prior 2004  
accumulation distribution. Any undistributed net income included 2005  
in the adjusted gross income of a beneficiary shall reduce the 2006  
undistributed net income of the trust commencing with the 2007  
earliest years of the accumulation period. 2008

(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.

(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.

(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.

(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) 2039  
of this section, "subsidized health plan" means a health plan 2040  
for which the employer pays any portion of the plan's cost. The 2041  
deduction allowed under division (A) (11) (a) of this section 2042  
shall be the net of any related premium refunds, related premium 2043  
reimbursements, or related insurance premium dividends received 2044  
during the taxable year. 2045

(b) Deduct, to the extent not otherwise deducted or 2046  
excluded in computing federal or Ohio adjusted gross income 2047  
during the taxable year, the amount the taxpayer paid during the 2048  
taxable year, not compensated for by any insurance or otherwise, 2049  
for medical care of the taxpayer, the taxpayer's spouse, and 2050  
dependents, to the extent the expenses exceed seven and one-half 2051  
per cent of the taxpayer's federal adjusted gross income. 2052

(c) Deduct, to the extent not otherwise deducted or 2053  
excluded in computing federal or Ohio adjusted gross income, any 2054  
amount included in federal adjusted gross income under section 2055  
105 or not excluded under section 106 of the Internal Revenue 2056  
Code solely because it relates to an accident and health plan 2057  
for a person who otherwise would be a "qualifying relative" and 2058  
thus a "dependent" under section 152 of the Internal Revenue 2059  
Code but for the fact that the person fails to meet the income 2060  
and support limitations under section 152(d) (1) (B) and (C) of 2061  
the Internal Revenue Code. 2062

(d) For purposes of division (A) (11) of this section, 2063  
"medical care" has the meaning given in section 213 of the 2064  
Internal Revenue Code, subject to the special rules, 2065  
limitations, and exclusions set forth therein, and "qualified 2066  
long-term care" has the same meaning given in section 7702B(c) 2067  
of the Internal Revenue Code. Solely for purposes of divisions 2068

(A) (11) (a) and (c) of this section, "dependent" includes a 2069  
person who otherwise would be a "qualifying relative" and thus a 2070  
"dependent" under section 152 of the Internal Revenue Code but 2071  
for the fact that the person fails to meet the income and 2072  
support limitations under section 152(d) (1) (B) and (C) of the 2073  
Internal Revenue Code. 2074

(12) (a) Deduct any amount included in federal adjusted 2075  
gross income solely because the amount represents a 2076  
reimbursement or refund of expenses that in any year the 2077  
taxpayer had deducted as an itemized deduction pursuant to 2078  
section 63 of the Internal Revenue Code and applicable United 2079  
States department of the treasury regulations. The deduction 2080  
otherwise allowed under division (A) (12) (a) of this section 2081  
shall be reduced to the extent the reimbursement is attributable 2082  
to an amount the taxpayer deducted under this section in any 2083  
taxable year. 2084

(b) Add any amount not otherwise included in Ohio adjusted 2085  
gross income for any taxable year to the extent that the amount 2086  
is attributable to the recovery during the taxable year of any 2087  
amount deducted or excluded in computing federal or Ohio 2088  
adjusted gross income in any taxable year. 2089

(13) Deduct any portion of the deduction described in 2090  
section 1341(a) (2) of the Internal Revenue Code, for repaying 2091  
previously reported income received under a claim of right, that 2092  
meets both of the following requirements: 2093

(a) It is allowable for repayment of an item that was 2094  
included in the taxpayer's adjusted gross income for a prior 2095  
taxable year and did not qualify for a credit under division (A) 2096  
or (B) of section 5747.05 of the Revised Code for that year; 2097

(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.	2098 2099
(14) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division (A) (14) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.	2100 2101 2102 2103 2104 2105 2106
(15) (a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;	2107 2108 2109 2110 2111 2112
(b) Add the amounts distributed from a medical savings account under division (A) (2) of section 3924.68 of the Revised Code during the taxable year.	2113 2114 2115
(16) Add any amount claimed as a credit under section 5747.059 or 5747.65 of the Revised Code to the extent that such amount satisfies either of the following:	2116 2117 2118
(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;	2119 2120 2121 2122
(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.	2123 2124 2125
(17) Deduct the amount contributed by the taxpayer to an	2126

individual development account program established by a county 2127  
department of job and family services pursuant to sections 2128  
329.11 to 329.14 of the Revised Code for the purpose of matching 2129  
funds deposited by program participants. On request of the tax 2130  
commissioner, the taxpayer shall provide any information that, 2131  
in the tax commissioner's opinion, is necessary to establish the 2132  
amount deducted under division (A)(17) of this section. 2133

(18) Beginning in taxable year 2001 but not for any 2134  
taxable year beginning after December 31, 2005, if the taxpayer 2135  
is married and files a joint return and the combined federal 2136  
adjusted gross income of the taxpayer and the taxpayer's spouse 2137  
for the taxable year does not exceed one hundred thousand 2138  
dollars, or if the taxpayer is single and has a federal adjusted 2139  
gross income for the taxable year not exceeding fifty thousand 2140  
dollars, deduct amounts paid during the taxable year for 2141  
qualified tuition and fees paid to an eligible institution for 2142  
the taxpayer, the taxpayer's spouse, or any dependent of the 2143  
taxpayer, who is a resident of this state and is enrolled in or 2144  
attending a program that culminates in a degree or diploma at an 2145  
eligible institution. The deduction may be claimed only to the 2146  
extent that qualified tuition and fees are not otherwise 2147  
deducted or excluded for any taxable year from federal or Ohio 2148  
adjusted gross income. The deduction may not be claimed for 2149  
educational expenses for which the taxpayer claims a credit 2150  
under section 5747.27 of the Revised Code. 2151

(19) Add any reimbursement received during the taxable 2152  
year of any amount the taxpayer deducted under division (A)(18) 2153  
of this section in any previous taxable year to the extent the 2154  
amount is not otherwise included in Ohio adjusted gross income. 2155

(20) (a) (i) Subject to divisions (A)(20)(a)(iii), (iv), and 2156

(v) of this section, add five-sixths of the amount of 2157  
depreciation expense allowed by subsection (k) of section 168 of 2158  
the Internal Revenue Code, including the taxpayer's 2159  
proportionate or distributive share of the amount of 2160  
depreciation expense allowed by that subsection to a pass- 2161  
through entity in which the taxpayer has a direct or indirect 2162  
ownership interest. 2163

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 2164  
of this section, add five-sixths of the amount of qualifying 2165  
section 179 depreciation expense, including the taxpayer's 2166  
proportionate or distributive share of the amount of qualifying 2167  
section 179 depreciation expense allowed to any pass-through 2168  
entity in which the taxpayer has a direct or indirect ownership 2169  
interest. 2170

(iii) Subject to division (A) (20) (a) (v) of this section, 2171  
for taxable years beginning in 2012 or thereafter, if the 2172  
increase in income taxes withheld by the taxpayer is equal to or 2173  
greater than ten per cent of income taxes withheld by the 2174  
taxpayer during the taxpayer's immediately preceding taxable 2175  
year, "two-thirds" shall be substituted for "five-sixths" for 2176  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2177

(iv) Subject to division (A) (20) (a) (v) of this section, 2178  
for taxable years beginning in 2012 or thereafter, a taxpayer is 2179  
not required to add an amount under division (A) (20) of this 2180  
section if the increase in income taxes withheld by the taxpayer 2181  
and by any pass-through entity in which the taxpayer has a 2182  
direct or indirect ownership interest is equal to or greater 2183  
than the sum of (I) the amount of qualifying section 179 2184  
depreciation expense and (II) the amount of depreciation expense 2185  
allowed to the taxpayer by subsection (k) of section 168 of the 2186

Internal Revenue Code, and including the taxpayer's 2187  
proportionate or distributive shares of such amounts allowed to 2188  
any such pass-through entities. 2189

(v) If a taxpayer directly or indirectly incurs a net 2190  
operating loss for the taxable year for federal income tax 2191  
purposes, to the extent such loss resulted from depreciation 2192  
expense allowed by subsection (k) of section 168 of the Internal 2193  
Revenue Code and by qualifying section 179 depreciation expense, 2194  
"the entire" shall be substituted for "five-sixths of the" for 2195  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 2196

The tax commissioner, under procedures established by the 2197  
commissioner, may waive the add-backs related to a pass-through 2198  
entity if the taxpayer owns, directly or indirectly, less than 2199  
five per cent of the pass-through entity. 2200

(b) Nothing in division (A) (20) of this section shall be 2201  
construed to adjust or modify the adjusted basis of any asset. 2202

(c) To the extent the add-back required under division (A) 2203  
(20) (a) of this section is attributable to property generating 2204  
nonbusiness income or loss allocated under section 5747.20 of 2205  
the Revised Code, the add-back shall be situated to the same 2206  
location as the nonbusiness income or loss generated by the 2207  
property for the purpose of determining the credit under 2208  
division (A) of section 5747.05 of the Revised Code. Otherwise, 2209  
the add-back shall be apportioned, subject to one or more of the 2210  
four alternative methods of apportionment enumerated in section 2211  
5747.21 of the Revised Code. 2212

(d) For the purposes of division (A) (20) (a) (v) of this 2213  
section, net operating loss carryback and carryforward shall not 2214  
include the allowance of any net operating loss deduction 2215

carryback or carryforward to the taxable year to the extent such 2216  
loss resulted from depreciation allowed by section 168(k) of the 2217  
Internal Revenue Code and by the qualifying section 179 2218  
depreciation expense amount. 2219

(e) For the purposes of divisions (A) (20) and (21) of this 2220  
section: 2221

(i) "Income taxes withheld" means the total amount 2222  
withheld and remitted under sections 5747.06 and 5747.07 of the 2223  
Revised Code by an employer during the employer's taxable year. 2224

(ii) "Increase in income taxes withheld" means the amount 2225  
by which the amount of income taxes withheld by an employer 2226  
during the employer's current taxable year exceeds the amount of 2227  
income taxes withheld by that employer during the employer's 2228  
immediately preceding taxable year. 2229

(iii) "Qualifying section 179 depreciation expense" means 2230  
the difference between (I) the amount of depreciation expense 2231  
directly or indirectly allowed to a taxpayer under section 179 2232  
of the Internal Revised Code, and (II) the amount of 2233  
depreciation expense directly or indirectly allowed to the 2234  
taxpayer under section 179 of the Internal Revenue Code as that 2235  
section existed on December 31, 2002. 2236

(21) (a) If the taxpayer was required to add an amount 2237  
under division (A) (20) (a) of this section for a taxable year, 2238  
deduct one of the following: 2239

(i) One-fifth of the amount so added for each of the five 2240  
succeeding taxable years if the amount so added was five-sixths 2241  
of qualifying section 179 depreciation expense or depreciation 2242  
expense allowed by subsection (k) of section 168 of the Internal 2243  
Revenue Code; 2244

(ii) One-half of the amount so added for each of the two 2245  
succeeding taxable years if the amount so added was two-thirds 2246  
of such depreciation expense; 2247

(iii) One-sixth of the amount so added for each of the six 2248  
succeeding taxable years if the entire amount of such 2249  
depreciation expense was so added. 2250

(b) If the amount deducted under division (A) (21) (a) of 2251  
this section is attributable to an add-back allocated under 2252  
division (A) (20) (c) of this section, the amount deducted shall 2253  
be situated to the same location. Otherwise, the add-back shall 2254  
be apportioned using the apportionment factors for the taxable 2255  
year in which the deduction is taken, subject to one or more of 2256  
the four alternative methods of apportionment enumerated in 2257  
section 5747.21 of the Revised Code. 2258

(c) No deduction is available under division (A) (21) (a) of 2259  
this section with regard to any depreciation allowed by section 2260  
168(k) of the Internal Revenue Code and by the qualifying 2261  
section 179 depreciation expense amount to the extent that such 2262  
depreciation results in or increases a federal net operating 2263  
loss carryback or carryforward. If no such deduction is 2264  
available for a taxable year, the taxpayer may carry forward the 2265  
amount not deducted in such taxable year to the next taxable 2266  
year and add that amount to any deduction otherwise available 2267  
under division (A) (21) (a) of this section for that next taxable 2268  
year. The carryforward of amounts not so deducted shall continue 2269  
until the entire addition required by division (A) (20) (a) of 2270  
this section has been deducted. 2271

(d) No refund shall be allowed as a result of adjustments 2272  
made by division (A) (21) of this section. 2273

(22) Deduct, to the extent not otherwise deducted or 2274  
excluded in computing federal or Ohio adjusted gross income for 2275  
the taxable year, the amount the taxpayer received during the 2276  
taxable year as reimbursement for life insurance premiums under 2277  
section 5919.31 of the Revised Code. 2278

(23) Deduct, to the extent not otherwise deducted or 2279  
excluded in computing federal or Ohio adjusted gross income for 2280  
the taxable year, the amount the taxpayer received during the 2281  
taxable year as a death benefit paid by the adjutant general 2282  
under section 5919.33 of the Revised Code. 2283

(24) Deduct, to the extent included in federal adjusted 2284  
gross income and not otherwise allowable as a deduction or 2285  
exclusion in computing federal or Ohio adjusted gross income for 2286  
the taxable year, military pay and allowances received by the 2287  
taxpayer during the taxable year for active duty service in the 2288  
United States army, air force, navy, marine corps, or coast 2289  
guard or reserve components thereof or the national guard. The 2290  
deduction may not be claimed for military pay and allowances 2291  
received by the taxpayer while the taxpayer is stationed in this 2292  
state. 2293

(25) Deduct, to the extent not otherwise allowable as a 2294  
deduction or exclusion in computing federal or Ohio adjusted 2295  
gross income for the taxable year and not otherwise compensated 2296  
for by any other source, the amount of qualified organ donation 2297  
expenses incurred by the taxpayer during the taxable year, not 2298  
to exceed ten thousand dollars. A taxpayer may deduct qualified 2299  
organ donation expenses only once for all taxable years 2300  
beginning with taxable years beginning in 2007. 2301

For the purposes of division (A) (25) of this section: 2302

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

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

(26) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, amounts received by the taxpayer as retired personnel pay for service in the uniformed services or reserve components thereof, or the national guard, or received by the surviving spouse or former spouse of such a taxpayer under the survivor benefit plan on account of such a taxpayer's death. If the taxpayer receives income on account of retirement paid under the federal civil service retirement system or federal employees retirement system, or under any successor retirement program enacted by the congress of the United States that is established and maintained for retired employees of the United States government, and such retirement income is based, in whole or in part, on credit for the taxpayer's uniformed service, the deduction allowed under this division shall include only that portion of such retirement income that is attributable to the taxpayer's uniformed service, to the extent that portion of such retirement income is otherwise included in federal adjusted gross income and is not otherwise deducted under this section. Any amount deducted under division (A) (26) of this section is not included in a taxpayer's adjusted gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division (A) (26) of this section on the basis

of which a credit was claimed under section 5747.055 of the Revised Code.

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

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

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

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

(31) (a) For taxable years beginning in 2015, deduct from 2364  
the portion of an individual's adjusted gross income that is 2365  
business income, to the extent not otherwise deducted or 2366  
excluded in computing federal or Ohio adjusted gross income for 2367  
the taxable year, the lesser of the following amounts: 2368

(i) Seventy-five per cent of the individual's business 2369  
income; 2370

(ii) Ninety-three thousand seven hundred fifty dollars for 2371  
each spouse if spouses file separate returns under section 2372  
5747.08 of the Revised Code or one hundred eighty-seven thousand 2373  
five hundred dollars for all other individuals. 2374

(b) For taxable years beginning in 2016 or thereafter, 2375  
deduct from the portion of an individual's adjusted gross income 2376  
that is business income, to the extent not otherwise deducted or 2377  
excluded in computing federal adjusted gross income for the 2378  
taxable year, one hundred twenty-five thousand dollars for each 2379  
spouse if spouses file separate returns under section 5747.08 of 2380  
the Revised Code or two hundred fifty thousand dollars for all 2381  
other individuals. 2382

(32) Deduct, as provided under section 5747.78 of the 2383  
Revised Code, contributions to ABLE savings accounts made in 2384  
accordance with sections 113.50 to 113.56 of the Revised Code. 2385

(B) "Business income" means income, including gain or 2386  
loss, arising from transactions, activities, and sources in the 2387  
regular course of a trade or business and includes income, gain, 2388  
or loss from real property, tangible property, and intangible 2389  
property if the acquisition, rental, management, and disposition 2390  
of the property constitute integral parts of the regular course 2391  
of a trade or business operation. "Business income" includes 2392

income, including gain or loss, from a partial or complete 2393  
liquidation of a business, including, but not limited to, gain 2394  
or loss from the sale or other disposition of goodwill. 2395

(C) "Nonbusiness income" means all income other than 2396  
business income and may include, but is not limited to, 2397  
compensation, rents and royalties from real or tangible personal 2398  
property, capital gains, interest, dividends and distributions, 2399  
patent or copyright royalties, or lottery winnings, prizes, and 2400  
awards. 2401

(D) "Compensation" means any form of remuneration paid to 2402  
an employee for personal services. 2403

(E) "Fiduciary" means a guardian, trustee, executor, 2404  
administrator, receiver, conservator, or any other person acting 2405  
in any fiduciary capacity for any individual, trust, or estate. 2406

(F) "Fiscal year" means an accounting period of twelve 2407  
months ending on the last day of any month other than December. 2408

(G) "Individual" means any natural person. 2409

(H) "Internal Revenue Code" means the "Internal Revenue 2410  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2411

(I) "Resident" means any of the following, provided that 2412  
division (I) (3) of this section applies only to taxable years of 2413  
a trust beginning in 2002 or thereafter: 2414

(1) An individual who is domiciled in this state, subject 2415  
to section 5747.24 of the Revised Code; 2416

(2) The estate of a decedent who at the time of death was 2417  
domiciled in this state. The domicile tests of section 5747.24 2418  
of the Revised Code are not controlling for purposes of division 2419  
(I) (2) of this section. 2420

(3) A trust that, in whole or part, resides in this state. 2421  
If only part of a trust resides in this state, the trust is a 2422  
resident only with respect to that part. 2423

For the purposes of division (I) (3) of this section: 2424

(a) A trust resides in this state for the trust's current 2425  
taxable year to the extent, as described in division (I) (3) (d) 2426  
of this section, that the trust consists directly or indirectly, 2427  
in whole or in part, of assets, net of any related liabilities, 2428  
that were transferred, or caused to be transferred, directly or 2429  
indirectly, to the trust by any of the following: 2430

(i) A person, a court, or a governmental entity or 2431  
instrumentality on account of the death of a decedent, but only 2432  
if the trust is described in division (I) (3) (e) (i) or (ii) of 2433  
this section; 2434

(ii) A person who was domiciled in this state for the 2435  
purposes of this chapter when the person directly or indirectly 2436  
transferred assets to an irrevocable trust, but only if at least 2437  
one of the trust's qualifying beneficiaries is domiciled in this 2438  
state for the purposes of this chapter during all or some 2439  
portion of the trust's current taxable year; 2440

(iii) A person who was domiciled in this state for the 2441  
purposes of this chapter when the trust document or instrument 2442  
or part of the trust document or instrument became irrevocable, 2443  
but only if at least one of the trust's qualifying beneficiaries 2444  
is a resident domiciled in this state for the purposes of this 2445  
chapter during all or some portion of the trust's current 2446  
taxable year. If a trust document or instrument became 2447  
irrevocable upon the death of a person who at the time of death 2448  
was domiciled in this state for purposes of this chapter, that 2449

person is a person described in division (I) (3) (a) (iii) of this section. 2450  
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(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code. 2452  
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(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e) (2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code. 2456  
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(d) For the purposes of division (I) (3) (a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities, by the qualifying ratio, which shall be computed as follows: 2466  
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(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I) (3) (a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related 2474  
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liabilities. 2480

(ii) Each subsequent time the trust receives assets, a 2481  
revised qualifying ratio shall be computed. The numerator of the 2482  
revised qualifying ratio is the sum of (1) the fair market value 2483  
of the trust's assets immediately prior to the subsequent 2484  
transfer, net of any related liabilities, multiplied by the 2485  
qualifying ratio last computed without regard to the subsequent 2486  
transfer, and (2) the fair market value of the subsequently 2487  
transferred assets at the time transferred, net of any related 2488  
liabilities, from sources enumerated in division (I) (3) (a) of 2489  
this section. The denominator of the revised qualifying ratio is 2490  
the fair market value of all the trust's assets immediately 2491  
after the subsequent transfer, net of any related liabilities. 2492

(iii) Whether a transfer to the trust is by or from any of 2493  
the sources enumerated in division (I) (3) (a) of this section 2494  
shall be ascertained without regard to the domicile of the 2495  
trust's beneficiaries. 2496

(e) For the purposes of division (I) (3) (a) (i) of this 2497  
section: 2498

(i) A trust is described in division (I) (3) (e) (i) of this 2499  
section if the trust is a testamentary trust and the testator of 2500  
that testamentary trust was domiciled in this state at the time 2501  
of the testator's death for purposes of the taxes levied under 2502  
Chapter 5731. of the Revised Code. 2503

(ii) A trust is described in division (I) (3) (e) (ii) of 2504  
this section if the transfer is a qualifying transfer described 2505  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2506  
trust is an irrevocable inter vivos trust, and at least one of 2507  
the trust's qualifying beneficiaries is domiciled in this state 2508

for purposes of this chapter during all or some portion of the 2509  
trust's current taxable year. 2510

(f) For the purposes of division (I) (3) (e) (ii) of this 2511  
section, a "qualifying transfer" is a transfer of assets, net of 2512  
any related liabilities, directly or indirectly to a trust, if 2513  
the transfer is described in any of the following: 2514

(i) The transfer is made to a trust, created by the 2515  
decedent before the decedent's death and while the decedent was 2516  
domiciled in this state for the purposes of this chapter, and, 2517  
prior to the death of the decedent, the trust became irrevocable 2518  
while the decedent was domiciled in this state for the purposes 2519  
of this chapter. 2520

(ii) The transfer is made to a trust to which the 2521  
decedent, prior to the decedent's death, had directly or 2522  
indirectly transferred assets, net of any related liabilities, 2523  
while the decedent was domiciled in this state for the purposes 2524  
of this chapter, and prior to the death of the decedent the 2525  
trust became irrevocable while the decedent was domiciled in 2526  
this state for the purposes of this chapter. 2527

(iii) The transfer is made on account of a contractual 2528  
relationship existing directly or indirectly between the 2529  
transferor and either the decedent or the estate of the decedent 2530  
at any time prior to the date of the decedent's death, and the 2531  
decedent was domiciled in this state at the time of death for 2532  
purposes of the taxes levied under Chapter 5731. of the Revised 2533  
Code. 2534

(iv) The transfer is made to a trust on account of a 2535  
contractual relationship existing directly or indirectly between 2536  
the transferor and another person who at the time of the 2537

decedent's death was domiciled in this state for purposes of 2538  
this chapter. 2539

(v) The transfer is made to a trust on account of the will 2540  
of a testator who was domiciled in this state at the time of the 2541  
testator's death for purposes of the taxes levied under Chapter 2542  
5731. of the Revised Code. 2543

(vi) The transfer is made to a trust created by or caused 2544  
to be created by a court, and the trust was directly or 2545  
indirectly created in connection with or as a result of the 2546  
death of an individual who, for purposes of the taxes levied 2547  
under Chapter 5731. of the Revised Code, was domiciled in this 2548  
state at the time of the individual's death. 2549

(g) The tax commissioner may adopt rules to ascertain the 2550  
part of a trust residing in this state. 2551

(J) "Nonresident" means an individual or estate that is 2552  
not a resident. An individual who is a resident for only part of 2553  
a taxable year is a nonresident for the remainder of that 2554  
taxable year. 2555

(K) "Pass-through entity" has the same meaning as in 2556  
section 5733.04 of the Revised Code. 2557

(L) "Return" means the notifications and reports required 2558  
to be filed pursuant to this chapter for the purpose of 2559  
reporting the tax due and includes declarations of estimated tax 2560  
when so required. 2561

(M) "Taxable year" means the calendar year or the 2562  
taxpayer's fiscal year ending during the calendar year, or 2563  
fractional part thereof, upon which the adjusted gross income is 2564  
calculated pursuant to this chapter. 2565

(N) "Taxpayer" means any person subject to the tax imposed 2566  
by section 5747.02 of the Revised Code or any pass-through 2567  
entity that makes the election under division (D) of section 2568  
5747.08 of the Revised Code. 2569

(O) "Dependents" means dependents as defined in the 2570  
Internal Revenue Code and as claimed in the taxpayer's federal 2571  
income tax return for the taxable year or which the taxpayer 2572  
would have been permitted to claim had the taxpayer filed a 2573  
federal income tax return. 2574

(P) "Principal county of employment" means, in the case of 2575  
a nonresident, the county within the state in which a taxpayer 2576  
performs services for an employer or, if those services are 2577  
performed in more than one county, the county in which the major 2578  
portion of the services are performed. 2579

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2580  
Code: 2581

(1) "Subdivision" means any county, municipal corporation, 2582  
park district, or township. 2583

(2) "Essential local government purposes" includes all 2584  
functions that any subdivision is required by general law to 2585  
exercise, including like functions that are exercised under a 2586  
charter adopted pursuant to the Ohio Constitution. 2587

(R) "Overpayment" means any amount already paid that 2588  
exceeds the figure determined to be the correct amount of the 2589  
tax. 2590

(S) "Taxable income" or "Ohio taxable income" applies only 2591  
to estates and trusts, and means federal taxable income, as 2592  
defined and used in the Internal Revenue Code, adjusted as 2593  
follows: 2594

(1) Add interest or dividends, net of ordinary, necessary, 2595  
and reasonable expenses not deducted in computing federal 2596  
taxable income, on obligations or securities of any state or of 2597  
any political subdivision or authority of any state, other than 2598  
this state and its subdivisions and authorities, but only to the 2599  
extent that such net amount is not otherwise includible in Ohio 2600  
taxable income and is described in either division (S) (1) (a) or 2601  
(b) of this section: 2602

(a) The net amount is not attributable to the S portion of 2603  
an electing small business trust and has not been distributed to 2604  
beneficiaries for the taxable year; 2605

(b) The net amount is attributable to the S portion of an 2606  
electing small business trust for the taxable year. 2607

(2) Add interest or dividends, net of ordinary, necessary, 2608  
and reasonable expenses not deducted in computing federal 2609  
taxable income, on obligations of any authority, commission, 2610  
instrumentality, territory, or possession of the United States 2611  
to the extent that the interest or dividends are exempt from 2612  
federal income taxes but not from state income taxes, but only 2613  
to the extent that such net amount is not otherwise includible 2614  
in Ohio taxable income and is described in either division (S) 2615  
(1) (a) or (b) of this section; 2616

(3) Add the amount of personal exemption allowed to the 2617  
estate pursuant to section 642(b) of the Internal Revenue Code; 2618

(4) Deduct interest or dividends, net of related expenses 2619  
deducted in computing federal taxable income, on obligations of 2620  
the United States and its territories and possessions or of any 2621  
authority, commission, or instrumentality of the United States 2622  
to the extent that the interest or dividends are exempt from 2623

state taxes under the laws of the United States, but only to the 2624  
extent that such amount is included in federal taxable income 2625  
and is described in either division (S) (1) (a) or (b) of this 2626  
section; 2627

(5) Deduct the amount of wages and salaries, if any, not 2628  
otherwise allowable as a deduction but that would have been 2629  
allowable as a deduction in computing federal taxable income for 2630  
the taxable year, had the targeted jobs credit allowed under 2631  
sections 38, 51, and 52 of the Internal Revenue Code not been in 2632  
effect, but only to the extent such amount relates either to 2633  
income included in federal taxable income for the taxable year 2634  
or to income of the S portion of an electing small business 2635  
trust for the taxable year; 2636

(6) Deduct any interest or interest equivalent, net of 2637  
related expenses deducted in computing federal taxable income, 2638  
on public obligations and purchase obligations, but only to the 2639  
extent that such net amount relates either to income included in 2640  
federal taxable income for the taxable year or to income of the 2641  
S portion of an electing small business trust for the taxable 2642  
year; 2643

(7) Add any loss or deduct any gain resulting from sale, 2644  
exchange, or other disposition of public obligations to the 2645  
extent that such loss has been deducted or such gain has been 2646  
included in computing either federal taxable income or income of 2647  
the S portion of an electing small business trust for the 2648  
taxable year; 2649

(8) Except in the case of the final return of an estate, 2650  
add any amount deducted by the taxpayer on both its Ohio estate 2651  
tax return pursuant to section 5731.14 of the Revised Code, and 2652  
on its federal income tax return in determining federal taxable 2653

income; 2654

(9) (a) Deduct any amount included in federal taxable 2655  
income solely because the amount represents a reimbursement or 2656  
refund of expenses that in a previous year the decedent had 2657  
deducted as an itemized deduction pursuant to section 63 of the 2658  
Internal Revenue Code and applicable treasury regulations. The 2659  
deduction otherwise allowed under division (S) (9) (a) of this 2660  
section shall be reduced to the extent the reimbursement is 2661  
attributable to an amount the taxpayer or decedent deducted 2662  
under this section in any taxable year. 2663

(b) Add any amount not otherwise included in Ohio taxable 2664  
income for any taxable year to the extent that the amount is 2665  
attributable to the recovery during the taxable year of any 2666  
amount deducted or excluded in computing federal or Ohio taxable 2667  
income in any taxable year, but only to the extent such amount 2668  
has not been distributed to beneficiaries for the taxable year. 2669

(10) Deduct any portion of the deduction described in 2670  
section 1341(a) (2) of the Internal Revenue Code, for repaying 2671  
previously reported income received under a claim of right, that 2672  
meets both of the following requirements: 2673

(a) It is allowable for repayment of an item that was 2674  
included in the taxpayer's taxable income or the decedent's 2675  
adjusted gross income for a prior taxable year and did not 2676  
qualify for a credit under division (A) or (B) of section 2677  
5747.05 of the Revised Code for that year. 2678

(b) It does not otherwise reduce the taxpayer's taxable 2679  
income or the decedent's adjusted gross income for the current 2680  
or any other taxable year. 2681

(11) Add any amount claimed as a credit under section 2682

5747.059 or 5747.65 of the Revised Code to the extent that the amount satisfies either of the following:

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

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

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

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.

(13) Add the net amount of income described in section

641(c) of the Internal Revenue Code to the extent that amount is 2712  
not included in federal taxable income. 2713

(14) Add or deduct the amount the taxpayer would be 2714  
required to add or deduct under division (A)(20) or (21) of this 2715  
section if the taxpayer's Ohio taxable income were computed in 2716  
the same manner as an individual's Ohio adjusted gross income is 2717  
computed under this section. In the case of a trust, division 2718  
(S)(14) of this section applies only to any of the trust's 2719  
taxable years beginning in 2002 or thereafter. 2720

(T) "School district income" and "school district income 2721  
tax" have the same meanings as in section 5748.01 of the Revised 2722  
Code. 2723

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 2724  
(7) of this section, "public obligations," "purchase 2725  
obligations," and "interest or interest equivalent" have the 2726  
same meanings as in section 5709.76 of the Revised Code. 2727

(V) "Limited liability company" means any limited 2728  
liability company formed under Chapter 1705. of the Revised Code 2729  
or under the laws of any other state. 2730

(W) "Pass-through entity investor" means any person who, 2731  
during any portion of a taxable year of a pass-through entity, 2732  
is a partner, member, shareholder, or equity investor in that 2733  
pass-through entity. 2734

(X) "Banking day" has the same meaning as in section 2735  
1304.01 of the Revised Code. 2736

(Y) "Month" means a calendar month. 2737

(Z) "Quarter" means the first three months, the second 2738  
three months, the third three months, or the last three months 2739

of the taxpayer's taxable year. 2740

(AA) (1) "Eligible institution" means a state university or 2741  
state institution of higher education as defined in section 2742  
3345.011 of the Revised Code, or a private, nonprofit college, 2743  
university, or other post-secondary institution located in this 2744  
state that possesses a certificate of authorization issued by 2745  
the chancellor of higher education pursuant to Chapter 1713. of 2746  
the Revised Code or a certificate of registration issued by the 2747  
state board of career colleges and schools under Chapter 3332. 2748  
of the Revised Code. 2749

(2) "Qualified tuition and fees" means tuition and fees 2750  
imposed by an eligible institution as a condition of enrollment 2751  
or attendance, not exceeding two thousand five hundred dollars 2752  
in each of the individual's first two years of post-secondary 2753  
education. If the individual is a part-time student, "qualified 2754  
tuition and fees" includes tuition and fees paid for the 2755  
academic equivalent of the first two years of post-secondary 2756  
education during a maximum of five taxable years, not exceeding 2757  
a total of five thousand dollars. "Qualified tuition and fees" 2758  
does not include: 2759

(a) Expenses for any course or activity involving sports, 2760  
games, or hobbies unless the course or activity is part of the 2761  
individual's degree or diploma program; 2762

(b) The cost of books, room and board, student activity 2763  
fees, athletic fees, insurance expenses, or other expenses 2764  
unrelated to the individual's academic course of instruction; 2765

(c) Tuition, fees, or other expenses paid or reimbursed 2766  
through an employer, scholarship, grant in aid, or other 2767  
educational benefit program. 2768

(BB) (1) "Modified business income" means the business 2769  
income included in a trust's Ohio taxable income after such 2770  
taxable income is first reduced by the qualifying trust amount, 2771  
if any. 2772

(2) "Qualifying trust amount" of a trust means capital 2773  
gains and losses from the sale, exchange, or other disposition 2774  
of equity or ownership interests in, or debt obligations of, a 2775  
qualifying investee to the extent included in the trust's Ohio 2776  
taxable income, but only if the following requirements are 2777  
satisfied: 2778

(a) The book value of the qualifying investee's physical 2779  
assets in this state and everywhere, as of the last day of the 2780  
qualifying investee's fiscal or calendar year ending immediately 2781  
prior to the date on which the trust recognizes the gain or 2782  
loss, is available to the trust. 2783

(b) The requirements of section 5747.011 of the Revised 2784  
Code are satisfied for the trust's taxable year in which the 2785  
trust recognizes the gain or loss. 2786

Any gain or loss that is not a qualifying trust amount is 2787  
modified business income, qualifying investment income, or 2788  
modified nonbusiness income, as the case may be. 2789

(3) "Modified nonbusiness income" means a trust's Ohio 2790  
taxable income other than modified business income, other than 2791  
the qualifying trust amount, and other than qualifying 2792  
investment income, as defined in section 5747.012 of the Revised 2793  
Code, to the extent such qualifying investment income is not 2794  
otherwise part of modified business income. 2795

(4) "Modified Ohio taxable income" applies only to trusts, 2796  
and means the sum of the amounts described in divisions (BB) (4) 2797

(a) to (c) of this section: 2798

(a) The fraction, calculated under section 5747.013, and 2799  
applying section 5747.231 of the Revised Code, multiplied by the 2800  
sum of the following amounts: 2801

(i) The trust's modified business income; 2802

(ii) The trust's qualifying investment income, as defined 2803  
in section 5747.012 of the Revised Code, but only to the extent 2804  
the qualifying investment income does not otherwise constitute 2805  
modified business income and does not otherwise constitute a 2806  
qualifying trust amount. 2807

(b) The qualifying trust amount multiplied by a fraction, 2808  
the numerator of which is the sum of the book value of the 2809  
qualifying investee's physical assets in this state on the last 2810  
day of the qualifying investee's fiscal or calendar year ending 2811  
immediately prior to the day on which the trust recognizes the 2812  
qualifying trust amount, and the denominator of which is the sum 2813  
of the book value of the qualifying investee's total physical 2814  
assets everywhere on the last day of the qualifying investee's 2815  
fiscal or calendar year ending immediately prior to the day on 2816  
which the trust recognizes the qualifying trust amount. If, for 2817  
a taxable year, the trust recognizes a qualifying trust amount 2818  
with respect to more than one qualifying investee, the amount 2819  
described in division (BB) (4) (b) of this section shall equal the 2820  
sum of the products so computed for each such qualifying 2821  
investee. 2822

(c) (i) With respect to a trust or portion of a trust that 2823  
is a resident as ascertained in accordance with division (I) (3) 2824

(d) of this section, its modified nonbusiness income. 2825

(ii) With respect to a trust or portion of a trust that is 2826

not a resident as ascertained in accordance with division (I) (3) 2827  
(d) of this section, the amount of its modified nonbusiness 2828  
income satisfying the descriptions in divisions (B) (2) to (5) of 2829  
section 5747.20 of the Revised Code, except as otherwise 2830  
provided in division (BB) (4) (c) (ii) of this section. With 2831  
respect to a trust or portion of a trust that is not a resident 2832  
as ascertained in accordance with division (I) (3) (d) of this 2833  
section, the trust's portion of modified nonbusiness income 2834  
recognized from the sale, exchange, or other disposition of a 2835  
debt interest in or equity interest in a section 5747.212 2836  
entity, as defined in section 5747.212 of the Revised Code, 2837  
without regard to division (A) of that section, shall not be 2838  
allocated to this state in accordance with section 5747.20 of 2839  
the Revised Code but shall be apportioned to this state in 2840  
accordance with division (B) of section 5747.212 of the Revised 2841  
Code without regard to division (A) of that section. 2842

If the allocation and apportionment of a trust's income 2843  
under divisions (BB) (4) (a) and (c) of this section do not fairly 2844  
represent the modified Ohio taxable income of the trust in this 2845  
state, the alternative methods described in division (C) of 2846  
section 5747.21 of the Revised Code may be applied in the manner 2847  
and to the same extent provided in that section. 2848

(5) (a) Except as set forth in division (BB) (5) (b) of this 2849  
section, "qualifying investee" means a person in which a trust 2850  
has an equity or ownership interest, or a person or unit of 2851  
government the debt obligations of either of which are owned by 2852  
a trust. For the purposes of division (BB) (2) (a) of this section 2853  
and for the purpose of computing the fraction described in 2854  
division (BB) (4) (b) of this section, all of the following apply: 2855

(i) If the qualifying investee is a member of a qualifying 2856

controlled group on the last day of the qualifying investee's 2857  
fiscal or calendar year ending immediately prior to the date on 2858  
which the trust recognizes the gain or loss, then "qualifying 2859  
investee" includes all persons in the qualifying controlled 2860  
group on such last day. 2861

(ii) If the qualifying investee, or if the qualifying 2862  
investee and any members of the qualifying controlled group of 2863  
which the qualifying investee is a member on the last day of the 2864  
qualifying investee's fiscal or calendar year ending immediately 2865  
prior to the date on which the trust recognizes the gain or 2866  
loss, separately or cumulatively own, directly or indirectly, on 2867  
the last day of the qualifying investee's fiscal or calendar 2868  
year ending immediately prior to the date on which the trust 2869  
recognizes the qualifying trust amount, more than fifty per cent 2870  
of the equity of a pass-through entity, then the qualifying 2871  
investee and the other members are deemed to own the 2872  
proportionate share of the pass-through entity's physical assets 2873  
which the pass-through entity directly or indirectly owns on the 2874  
last day of the pass-through entity's calendar or fiscal year 2875  
ending within or with the last day of the qualifying investee's 2876  
fiscal or calendar year ending immediately prior to the date on 2877  
which the trust recognizes the qualifying trust amount. 2878

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2879  
section, "upper level pass-through entity" means a pass-through 2880  
entity directly or indirectly owning any equity of another pass- 2881  
through entity, and "lower level pass-through entity" means that 2882  
other pass-through entity. 2883

An upper level pass-through entity, whether or not it is 2884  
also a qualifying investee, is deemed to own, on the last day of 2885  
the upper level pass-through entity's calendar or fiscal year, 2886

the proportionate share of the lower level pass-through entity's 2887  
physical assets that the lower level pass-through entity 2888  
directly or indirectly owns on the last day of the lower level 2889  
pass-through entity's calendar or fiscal year ending within or 2890  
with the last day of the upper level pass-through entity's 2891  
fiscal or calendar year. If the upper level pass-through entity 2892  
directly and indirectly owns less than fifty per cent of the 2893  
equity of the lower level pass-through entity on each day of the 2894  
upper level pass-through entity's calendar or fiscal year in 2895  
which or with which ends the calendar or fiscal year of the 2896  
lower level pass-through entity and if, based upon clear and 2897  
convincing evidence, complete information about the location and 2898  
cost of the physical assets of the lower pass-through entity is 2899  
not available to the upper level pass-through entity, then 2900  
solely for purposes of ascertaining if a gain or loss 2901  
constitutes a qualifying trust amount, the upper level pass- 2902  
through entity shall be deemed as owning no equity of the lower 2903  
level pass-through entity for each day during the upper level 2904  
pass-through entity's calendar or fiscal year in which or with 2905  
which ends the lower level pass-through entity's calendar or 2906  
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 2907  
shall be construed to provide for any deduction or exclusion in 2908  
computing any trust's Ohio taxable income. 2909

(b) With respect to a trust that is not a resident for the 2910  
taxable year and with respect to a part of a trust that is not a 2911  
resident for the taxable year, "qualifying investee" for that 2912  
taxable year does not include a C corporation if both of the 2913  
following apply: 2914

(i) During the taxable year the trust or part of the trust 2915  
recognizes a gain or loss from the sale, exchange, or other 2916  
disposition of equity or ownership interests in, or debt 2917

obligations of, the C corporation.	2918
(ii) Such gain or loss constitutes nonbusiness income.	2919
(6) "Available" means information is such that a person is	2920
able to learn of the information by the due date plus	2921
extensions, if any, for filing the return for the taxable year	2922
in which the trust recognizes the gain or loss.	2923
(CC) "Qualifying controlled group" has the same meaning as	2924
in section 5733.04 of the Revised Code.	2925
(DD) "Related member" has the same meaning as in section	2926
5733.042 of the Revised Code.	2927
(EE) (1) For the purposes of division (EE) of this section:	2928
(a) "Qualifying person" means any person other than a	2929
qualifying corporation.	2930
(b) "Qualifying corporation" means any person classified	2931
for federal income tax purposes as an association taxable as a	2932
corporation, except either of the following:	2933
(i) A corporation that has made an election under	2934
subchapter S, chapter one, subtitle A, of the Internal Revenue	2935
Code for its taxable year ending within, or on the last day of,	2936
the investor's taxable year;	2937
(ii) A subsidiary that is wholly owned by any corporation	2938
that has made an election under subchapter S, chapter one,	2939
subtitle A of the Internal Revenue Code for its taxable year	2940
ending within, or on the last day of, the investor's taxable	2941
year.	2942
(2) For the purposes of this chapter, unless expressly	2943
stated otherwise, no qualifying person indirectly owns any asset	2944

directly or indirectly owned by any qualifying corporation. 2945

(FF) For purposes of this chapter and Chapter 5751. of the 2946  
Revised Code: 2947

(1) "Trust" does not include a qualified pre-income tax 2948  
trust. 2949

(2) A "qualified pre-income tax trust" is any pre-income 2950  
tax trust that makes a qualifying pre-income tax trust election 2951  
as described in division (FF)(3) of this section. 2952

(3) A "qualifying pre-income tax trust election" is an 2953  
election by a pre-income tax trust to subject to the tax imposed 2954  
by section 5751.02 of the Revised Code the pre-income tax trust 2955  
and all pass-through entities of which the trust owns or 2956  
controls, directly, indirectly, or constructively through 2957  
related interests, five per cent or more of the ownership or 2958  
equity interests. The trustee shall notify the tax commissioner 2959  
in writing of the election on or before April 15, 2006. The 2960  
election, if timely made, shall be effective on and after 2961  
January 1, 2006, and shall apply for all tax periods and tax 2962  
years until revoked by the trustee of the trust. 2963

(4) A "pre-income tax trust" is a trust that satisfies all 2964  
of the following requirements: 2965

(a) The document or instrument creating the trust was 2966  
executed by the grantor before January 1, 1972; 2967

(b) The trust became irrevocable upon the creation of the 2968  
trust; and 2969

(c) The grantor was domiciled in this state at the time 2970  
the trust was created. 2971

(GG) "Uniformed services" has the same meaning as in 10 2972

U.S.C. 101. 2973

(HH) "Taxable business income" means the amount by which 2974  
an individual's business income that is included in federal 2975  
adjusted gross income exceeds the amount of business income the 2976  
individual is authorized to deduct under division (A) (31) of 2977  
this section for the taxable year. 2978

(II) "Employer" does not include a franchisor with respect 2979  
to the franchisor's relationship with a franchisee or an 2980  
employee of a franchisee, unless the franchisor agrees to assume 2981  
that role in writing or a court of competent jurisdiction 2982  
determines that the franchisor exercises a type or degree of 2983  
control over the franchisee or the franchisee's employees that 2984  
is not customarily exercised by a franchisor for the purpose of 2985  
protecting the franchisor's trademark, brand, or both. For 2986  
purposes of this division, "franchisor" and "franchisee" have 2987  
the same meanings as in 16 C.F.R. 436.1. 2988

**Section 2.** That existing sections 1349.61, 4111.03, 2989  
4111.14, 4113.15, 4113.16, 4121.01, 4123.01, 4123.30, 4123.38, 2990  
4123.77, 4141.01, and 5747.01 of the Revised Code are hereby 2991  
repealed. 2992

**Section 3.** Section 4111.03 of the Revised Code is 2993  
presented in this act as a composite of the section as amended 2994  
by both Sub. H.B. 187 and Am. Sub. H.B. 690 of the 126th General 2995  
Assembly. The General Assembly, applying the principle stated in 2996  
division (B) of section 1.52 of the Revised Code that amendments 2997  
are to be harmonized if reasonably capable of simultaneous 2998  
operation, finds that the composite is the resulting version of 2999  
the section in effect prior to the effective date of the section 3000  
as presented in this act. 3001