

133rd General Assembly  
Regular Session  
2019-2020

Sub. H. B. No. 80

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**A BILL**

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

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

**Section 1.** All items in this section are hereby appropriated 14  
out of any moneys in the state treasury to the credit of the 15  
designated fund. For all appropriations made in this act, those in 16  
the first column are for fiscal year 2020, and those in the second 17  
column are for fiscal year 2021. 18

BWC BUREAU OF WORKERS' COMPENSATION 19

Dedicated Purpose Fund Group 20

7023 855407 Claims, Risk and \$ 120,939,816 \$ 124,329,031 21

Medical Management

7023	855408	Fraud Prevention	\$	14,095,916	\$	14,231,413	22
7023	855409	Administrative Services	\$	117,250,236	\$	116,025,396	23
7023	855410	Attorney General Payments	\$	4,621,850	\$	4,621,850	24
8220	855606	Coal Workers' Fund	\$	186,632	\$	188,487	25
8230	855608	Marine Industry	\$	78,188	\$	78,698	26
8250	855605	Disabled Workers Relief Fund	\$	193,419	\$	195,709	27
8260	855609	Safety and Hygiene Operating	\$	24,079,350	\$	23,745,661	28
8260	855610	Safety Grants	\$	20,000,000	\$	20,000,000	29
8260	855611	Health and Safety Initiative	\$	6,000,000	\$	6,000,000	30
8260	855612	Safety Campaign	\$	1,500,000	\$	1,500,000	31
8260	855613	Research Grants	\$	2,000,000	\$	2,000,000	32
8260	855618	Substance Use Recovery and Workplace Safety Program	\$	5,000,000	\$	10,000,000	33
8260	855619	Safety and Health Center of Excellence	\$	2,000,000	\$	0	34
TOTAL DPF Dedicated Purpose Fund Group			\$	317,945,407	\$	322,916,245	35
Federal Fund Group							36
3490	855601	OSHA Enforcement	\$	1,676,000	\$	1,676,000	37
3FW0	855614	BLS SOII Grant	\$	195,104	\$	195,104	38
3FW0	855615	NIOSH Grant	\$	24,995	\$	0	39
TOTAL FED Federal Fund Group			\$	1,896,099	\$	1,871,104	40
TOTAL ALL BUDGET FUND GROUPS			\$	319,841,506	\$	324,787,349	41
WORKERS' COMPENSATION FRAUD UNIT							42
Of the foregoing appropriation item 855410, Attorney General							43

Payments, \$828,200 in each fiscal year shall be used to fund the 44  
expenses of the Workers' Compensation Fraud Unit within the 45  
Attorney General's Office. These payments shall be processed at 46  
the beginning of each quarter of each fiscal year and deposited 47  
into the Workers' Compensation Section Fund (Fund 1950) used by 48  
the Attorney General. 49

SAFETY AND HYGIENE 50

Notwithstanding section 4121.37 of the Revised Code, the 51  
Treasurer of State shall remit \$24,080,000 cash in fiscal year 52  
2020 and \$23,746,000 cash in fiscal year 2021 from the State 53  
Insurance Fund to the state treasury to the credit of the Safety 54  
and Hygiene Fund (Fund 8260). 55

SAFETY GRANTS 56

Notwithstanding section 4121.37 of the Revised Code, the 57  
Treasurer of State shall remit \$20,000,000 in cash in fiscal year 58  
2020 and \$20,000,000 in cash in fiscal year 2021 from the State 59  
Insurance Fund to the state treasury to the credit of the Safety 60  
and Hygiene Fund (Fund 8260) to be used for Safety Grants. 61

HEALTH AND SAFETY INITIATIVE 62

Notwithstanding section 4121.37 of Revised Code, the 63  
Treasurer of State shall remit \$6,000,000 in cash in fiscal year 64  
2020 and \$6,000,000 in cash in fiscal year 2021 from the State 65  
Insurance Fund to the state treasury to the credit of the Safety 66  
and Hygiene Fund (Fund 8260). These amounts shall be used under 67  
appropriation item 855611, Health and Safety Initiative, for the 68  
purpose of creating and operating a health and wellness program. 69

SAFETY CAMPAIGN 70

Notwithstanding section 4121.37 of the Revised Code, the 71  
Treasurer of State shall remit \$1,500,000 in cash in fiscal year 72  
2020 and \$1,500,000 in cash in fiscal year 2021 from the State 73

Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855612, Safety Campaign, for the purpose of creating and operating a statewide safety awareness and education campaign.

FEDERAL GRANT PROGRAMS

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

VOCATIONAL REHABILITATION

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

RESEARCH GRANTS

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$2,000,000 in cash in fiscal year 2020 and \$2,000,000 in cash in fiscal year 2021 from the State Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855613, Research Grants, for the purpose of creating and operating the occupational safety and health research program.

SUBSTANCE USE RECOVERY AND WORKPLACE SAFETY PROGRAM

Notwithstanding section 4121.37 of the Revised Code, the Treasurer of State shall remit \$5,000,000 in cash in fiscal year 2020 and \$10,000,000 in cash in fiscal year 2021 from the State

Insurance Fund to the state treasury to the credit of the Safety and Hygiene Fund (Fund 8260). These amounts shall be used under appropriation item 855618, Substance Use Recovery and Workplace Safety Program, for the purpose of creating and operating the opioid workplace safety program.

SAFETY AND HEALTH CENTER OF EXCELLENCE

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

ADMINISTRATIVE COST FUND

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

**Section 2.** DEPUTY INSPECTOR GENERAL FOR BWC AND OIC FUNDING

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

To pay for the FY 2021 costs related to the Deputy Inspector General for the Bureau of Workers' Compensation and Industrial Commission, on July 1, 2020, and January 1, 2021, or as soon as

possible thereafter, the Director of Budget and Management shall 134  
transfer \$212,500 in cash from the Workers' Compensation Fund 135  
(Fund 7023) to the Deputy Inspector General for the Bureau of 136  
Workers' Compensation and Industrial Commission Fund (Fund 5FT0). 137

If additional amounts are needed, the Inspector General may 138  
seek Controlling Board approval for additional transfers of cash 139  
and to increase the amount appropriated in appropriation item 140  
965604, Deputy Inspector General for the Bureau of Workers' 141  
Compensation and Industrial Commission. 142

**Section 3.** Law contained in the Main Operating Appropriations 143  
Act of the 133rd General Assembly that applies generally to the 144  
appropriations made in that act also applies generally to the 145  
appropriations made in this act. 146

**Section 4.** The provisions of law contained in this act, and 147  
their applications, are severable. If any provision of law 148  
contained in this act, or if any application of any provision of 149  
law contained in this act, is held invalid, the invalidity does 150  
not affect other provisions of law contained in this act and their 151  
applications that can be given effect without the invalid 152  
provision or application. 153

**Section 5.** Sections 1 to 5 of this act are exempt from the 154  
referendum under Ohio Constitution, Article II, Section 1d and 155  
section 1.471 of the Revised Code and therefore take effect 156  
immediately when this act becomes law. 157

**Section 6.** That sections 4113.21, 4121.01, 4123.01, 4123.026, 158  
4123.038, 4123.46, 4123.52, 4123.56, 4123.58, 4123.65, 4141.01, 159  
and 5747.01 be amended and sections 4121.471, 4177.01, 4177.02, 160  
4177.03, 4177.04, 4177.05, and 4177.06 of the Revised Code be 161  
enacted to read as follows: 162

**Sec. 4113.21.** (A) No private employer shall require any 163  
prospective employee or applicant for employment to pay the cost 164  
of a medical examination required by the employer as a condition 165  
of employment. 166

(B) No public employer or private employer furnishing 167  
services to a public employer in accordance with a contract 168  
subject to the "Service Contract Act of 1965," 41 U.S.C. 6701 et 169  
seq., shall require any employee, prospective employee, or 170  
applicant for employment to pay the cost of a an initial or any 171  
subsequent medical ~~examination~~ examinations required by the public 172  
employer or private employer as a condition of employment or 173  
continued employment. 174

(C) As used in this section: 175

(1) "Private employer" means any individual, partnership, 176  
trust, estate, joint-stock company, insurance company, common 177  
carrier, public utility, or corporation, whether domestic or 178  
foreign, or the receiver, trustee in bankruptcy, trustee, or the 179  
successor thereof, who has in employment three or more individuals 180  
at any one time within a calendar year. 181

(2) "Public employer" means the United States, the state, any 182  
political subdivision of the state, and any agency of the United 183  
States, the state, or a political subdivision of the state. 184

(3) "Employee" means any person who may be permitted, 185  
required, or directed by any employer in consideration of direct 186  
or indirect gain or profit, to engage in any employment. 187

(D) Any employer who violates this section shall forfeit not 188  
more than one hundred dollars for each violation. The bureau of 189  
workers' compensation and the public utilities commission shall 190  
enforce this section. 191

**Sec. 4121.01.** (A) As used in sections 4121.01 to 4121.29 of 192

the Revised Code: 193

(1) "Place of employment" means every place, whether indoors 194  
or out, or underground, and the premises appurtenant thereto, 195  
where either temporarily or permanently any industry, trade, or 196  
business is carried on, or where any process or operation, 197  
directly or indirectly related to any industry, trade, or 198  
business, is carried on and where any person is directly or 199  
indirectly employed by another for direct or indirect gain or 200  
profit, but does not include any place where persons are employed 201  
in private domestic service or agricultural pursuits which do not 202  
involve the use of mechanical power. 203

(2) "Employment" means any trade, occupation, or process of 204  
manufacture or any method of carrying on such trade, occupation, 205  
or process of manufacture in which any person may be engaged, 206  
except in such private domestic service or agricultural pursuits 207  
as do not involve the use of mechanical power. 208

(3) "Employer" means every person, firm, corporation, agent, 209  
manager, representative, or other person having control or custody 210  
of any employment, place of employment, or employee. "Employer" 211  
does not include a franchisor with respect to the franchisor's 212  
relationship with a franchisee or an employee of a franchisee, 213  
unless the franchisor agrees to assume that role in writing or a 214  
court of competent jurisdiction determines that the franchisor 215  
exercises a type or degree of control over the franchisee or the 216  
franchisee's employees that is not customarily exercised by a 217  
franchisor for the purpose of protecting the franchisor's 218  
trademark, brand, or both. For purposes of this division, 219  
"franchisor" and "franchisee" have the same meanings as in 16 220  
C.F.R. 436.1. 221

(4)(a) "Employee" means a person who ~~may be required or~~ 222  
~~directed by any employer, in consideration of direct or indirect~~ 223

~~gain or profit, to engage in any employment, or to go, or work, or~~ 224  
~~be at any time in any place of employment~~ is an employee under the 225  
rules adopted by the superintendent of industrial compliance 226  
pursuant to section 4177.01 of the Revised Code, including a 227  
person described in division (A)(4)(b) of this section if a motor 228  
carrier elects to consider the person to be an employee. 229

(b) "Employee" does not include a person who operates a 230  
vehicle or vessel in the performance of services for or on behalf 231  
of a motor carrier transporting property and to whom all of the 232  
following factors apply: 233

(i) The person owns the vehicle or vessel that is used in 234  
performing the services for or on behalf of the carrier, or the 235  
person leases the vehicle or vessel under a bona fide lease 236  
agreement that is not a temporary replacement lease agreement. For 237  
purposes of this division, a bona fide lease agreement does not 238  
include an agreement between the person and the motor carrier 239  
transporting property for which, or on whose behalf, the person 240  
provides services. 241

(ii) The person is responsible for supplying the necessary 242  
personal services to operate the vehicle or vessel used to provide 243  
the service. 244

(iii) The compensation paid to the person is based on factors 245  
related to work performed, including on a mileage-based rate or a 246  
percentage of any schedule of rates, and not solely on the basis 247  
of the hours or time expended. 248

(iv) The person substantially controls the means and manner 249  
of performing the services, in conformance with regulatory 250  
requirements and specifications of the shipper. 251

(v) The person enters into a written contract with the 252  
carrier for whom the person is performing the services that 253  
describes the relationship between the person and the carrier to 254

be that of an independent contractor and not that of an employee. 255

(vi) The person is responsible for substantially all of the 256  
principal operating costs of the vehicle or vessel and equipment 257  
used to provide the services, including maintenance, fuel, 258  
repairs, supplies, vehicle or vessel insurance, and personal 259  
expenses, except that the person may be paid by the carrier the 260  
carrier's fuel surcharge and incidental costs, including tolls, 261  
permits, and lumper fees. 262

(vii) The person is responsible for any economic loss or 263  
economic gain from the arrangement with the carrier. 264

(5) "Frequenter" means every person, other than an employee, 265  
who may go in or be in a place of employment under circumstances 266  
which render the person other than a trespasser. 267

(6) "Deputy" means any person employed by the industrial 268  
commission or the bureau of workers' compensation, designated as a 269  
deputy by the commission or the administrator of workers' 270  
compensation, who possesses special, technical, scientific, 271  
managerial, professional, or personal abilities or qualities in 272  
matters within the jurisdiction of the commission or the bureau, 273  
and who may be engaged in the performance of duties under the 274  
direction of the commission or the bureau calling for the exercise 275  
of such abilities or qualities. 276

(7) "Order" means any decision, rule, regulation, direction, 277  
requirement, or standard, or any other determination or decision 278  
that the bureau is empowered to and does make. 279

(8) "General order" means an order that applies generally 280  
throughout the state to all persons, employments, or places of 281  
employment, or all persons, employments, or places of employment 282  
of a class under the jurisdiction of the bureau. All other orders 283  
shall be considered special orders. 284

(9) "Local order" means any ordinance, order, rule, or 285

determination of the legislative authority of any municipal 286  
corporation, or any trustees, or board or officers of any 287  
municipal corporation upon any matter over which the bureau has 288  
jurisdiction. 289

(10) "Welfare" means comfort, decency, and moral well-being. 290

(11) "Safe" or "safety," as applied to any employment or a 291  
place of employment, means such freedom from danger to the life, 292  
health, safety, or welfare of employees or frequenters as the 293  
nature of the employment will reasonably permit, including 294  
requirements as to the hours of labor with relation to the health 295  
and welfare of employees. 296

(12) "Employee organization" means any labor or bona fide 297  
organization in which employees participate and that exists for 298  
the purpose, in whole or in part, of dealing with employers 299  
concerning grievances, labor disputes, wages, hours, terms, and 300  
other conditions of employment. 301

(13) "Motor carrier" has the same meaning as in section 302  
4923.01 of the Revised Code. 303

(B) As used in the Revised Code: 304

(1) "Industrial commission" means the chairperson of the 305  
three-member industrial commission created pursuant to section 306  
4121.02 of the Revised Code when the context refers to the 307  
authority vested in the chairperson as the chief executive officer 308  
of the three-member industrial commission pursuant to divisions 309  
(A), (B), (C), and (D) of section 4121.03 of the Revised Code. 310

(2) "Industrial commission" means the three-member industrial 311  
commission created pursuant to section 4121.02 of the Revised Code 312  
when the context refers to the authority vested in the 313  
three-member industrial commission pursuant to division (E) of 314  
section 4121.03 of the Revised Code. 315

(3) "Industrial commission" means the industrial commission 316  
as a state agency when the context refers to the authority vested 317  
in the industrial commission as a state agency. 318

Sec. 4121.471. A claim for an additional award under Section 319  
35 of Article II, Ohio Constitution, alleging that an injury, 320  
occupational disease, or death resulted from an employer's failure 321  
to comply with a specific safety rule for the protection of the 322  
lives, health, and safety of employees shall be forever barred 323  
unless it is filed within one year after the date of the injury, 324  
death, or diagnosis of disability due to occupational disease. 325

**Sec. 4123.01.** As used in this chapter: 326

(A)(1) "Employee" means: 327

(a) ~~Every person in the service of the state, or of any 328~~  
~~county, municipal corporation, township, or school district 329~~  
~~therein who is an employee under the rules adopted by the 330~~  
~~superintendent of industrial compliance pursuant to section 331~~  
4177.01 of the Revised Code, including regular members of lawfully 332  
constituted police and fire departments of municipal corporations 333  
and townships, whether paid or volunteer, and wherever serving 334  
within the state or on temporary assignment outside thereof, and 335  
executive officers of boards of education, under any appointment 336  
or contract of hire, express or implied, oral or written, 337  
including any elected official of the state, or of any county, 338  
municipal corporation, or township, or members of boards of 339  
education. 340

As used in division (A)(1)(a) of this section, the term 341  
"employee" includes the following persons when responding to an 342  
inherently dangerous situation that calls for an immediate 343  
response on the part of the person, regardless of whether the 344  
person is within the limits of the jurisdiction of the person's 345

regular employment or voluntary service when responding, on the 346  
condition that the person responds to the situation as the person 347  
otherwise would if the person were on duty in the person's 348  
jurisdiction: 349

~~(i) Off-duty peace officers. As used in division (A)(1)(a)(i) 350  
of this section, "peace officer" has the same meaning as in 351  
section 2935.01 of the Revised Code.; 352~~

~~(ii) Off-duty firefighters, whether paid or volunteer, of a 353  
lawfully constituted fire department.; 354~~

~~(iii) Off-duty first responders, emergency medical 355  
technicians basic, emergency medical technicians intermediate, or 356  
emergency medical technicians paramedic, whether paid or 357  
volunteer, emergency medical workers of an ambulance service 358  
organization or emergency medical service organization pursuant to 359  
Chapter 4765. of the Revised Code. 360~~

~~(b) Every person in the service of any person, firm, or 361  
private corporation, including any public service corporation, 362  
that (i) employs one or more persons regularly in the same 363  
business or in or about the same establishment under any contract 364  
of hire, express or implied, oral or written, including As used in 365  
division (A)(1)(a) of this section, the term "employee" includes 366  
aliens and minors, household workers who earn one hundred sixty 367  
dollars or more in cash in any calendar quarter from a single 368  
household, and casual workers who earn one hundred sixty dollars 369  
or more in cash in any calendar quarter from a single employer, or 370  
(ii) is bound by any such contract of hire or by any other written 371  
contract, to pay into the state insurance fund the premiums 372  
provided by this chapter. 373~~

~~(c) Every person who performs labor or provides services 374  
pursuant to a construction contract, as defined in section 4123.79 375  
of the Revised Code, if at least ten of the following criteria 376~~

apply;	377
<del>(i) The person is required to comply with instructions from</del>	378
<del>the other contracting party regarding the manner or method of</del>	379
<del>performing services;</del>	380
<del>(ii) The person is required by the other contracting party to</del>	381
<del>have particular training;</del>	382
<del>(iii) The person's services are integrated into the regular</del>	383
<del>functioning of the other contracting party;</del>	384
<del>(iv) The person is required to perform the work personally;</del>	385
<del>(v) The person is hired, supervised, or paid by the other</del>	386
<del>contracting party;</del>	387
<del>(vi) A continuing relationship exists between the person and</del>	388
<del>the other contracting party that contemplates continuing or</del>	389
<del>recurring work even if the work is not full time;</del>	390
<del>(vii) The person's hours of work are established by the other</del>	391
<del>contracting party;</del>	392
<del>(viii) The person is required to devote full time to the</del>	393
<del>business of the other contracting party;</del>	394
<del>(ix) The person is required to perform the work on the</del>	395
<del>premises of the other contracting party;</del>	396
<del>(x) The person is required to follow the order of work set by</del>	397
<del>the other contracting party;</del>	398
<del>(xi) The person is required to make oral or written reports</del>	399
<del>of progress to the other contracting party;</del>	400
<del>(xii) The person is paid for services on a regular basis such</del>	401
<del>as hourly, weekly, or monthly;</del>	402
<del>(xiii) The person's expenses are paid for by the other</del>	403
<del>contracting party;</del>	404
<del>(xiv) The person's tools and materials are furnished by the</del>	405

<del>other contracting party;</del>	406
<del>(xv) The person is provided with the facilities used to perform services;</del>	407 408
<del>(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;</del>	409 410
<del>(xvii) The person is not performing services for a number of employers at the same time;</del>	411 412
<del>(xviii) The person does not make the same services available to the general public;</del>	413 414
<del>(xix) The other contracting party has a right to discharge the person;</del>	415 416
<del>(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.</del>	417 418 419
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or who is a self-insuring employer and who has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.	420 421 422 423 424 425 426 427 428 429 430 431 432
(d) Every person who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property, unless all of the following factors apply	433 434 435

to the person: 436

(i) The person owns the vehicle or vessel that is used in 437  
performing the services for or on behalf of the carrier, or the 438  
person leases the vehicle or vessel under a bona fide lease 439  
agreement that is not a temporary replacement lease agreement. For 440  
purposes of this division, a bona fide lease agreement does not 441  
include an agreement between the person and the motor carrier 442  
transporting property for which, or on whose behalf, the person 443  
provides services. 444

(ii) The person is responsible for supplying the necessary 445  
personal services to operate the vehicle or vessel used to provide 446  
the service. 447

(iii) The compensation paid to the person is based on factors 448  
related to work performed, including on a mileage-based rate or a 449  
percentage of any schedule of rates, and not solely on the basis 450  
of the hours or time expended. 451

(iv) The person substantially controls the means and manner 452  
of performing the services, in conformance with regulatory 453  
requirements and specifications of the shipper. 454

(v) The person enters into a written contract with the 455  
carrier for whom the person is performing the services that 456  
describes the relationship between the person and the carrier to 457  
be that of an independent contractor and not that of an employee. 458

(vi) The person is responsible for substantially all of the 459  
principal operating costs of the vehicle or vessel and equipment 460  
used to provide the services, including maintenance, fuel, 461  
repairs, supplies, vehicle or vessel insurance, and personal 462  
expenses, except that the person may be paid by the carrier the 463  
carrier's fuel surcharge and incidental costs, including tolls, 464  
permits, and lumper fees. 465

(vii) The person is responsible for any economic loss or 466

economic gain from the arrangement with the carrier. 467

(2) "Employee" does not mean any of the following: 468

(a) A duly ordained, commissioned, or licensed minister or 469  
assistant or associate minister of a church in the exercise of 470  
ministry; 471

(b) Any officer of a family farm corporation; 472

(c) An individual incorporated as a corporation; 473

(d) An officer of a nonprofit corporation, as defined in 474  
section 1702.01 of the Revised Code, who volunteers the person's 475  
services as an officer; 476

(e) An individual who otherwise is an employee of an employer 477  
but who signs the waiver and affidavit specified in section 478  
4123.15 of the Revised Code on the condition that the 479  
administrator has granted a waiver and exception to the 480  
individual's employer under section 4123.15 of the Revised Code; 481

(f)(i) A qualifying employee described in division (A)(14)(a) 482  
of section 5703.94 of the Revised Code when the qualifying 483  
employee is performing disaster work in this state during a 484  
disaster response period pursuant to a qualifying solicitation 485  
received by the employee's employer; 486

(ii) A qualifying employee described in division (A)(14)(b) 487  
of section 5703.94 of the Revised Code when the qualifying 488  
employee is performing disaster work in this state during a 489  
disaster response period on critical infrastructure owned or used 490  
by the employee's employer; 491

(iii) As used in division (A)(2)(f) of this section, 492  
"critical infrastructure," "disaster response period," "disaster 493  
work," and "qualifying employee" have the same meanings as in 494  
section 5703.94 of the Revised Code. 495

Any employer may elect to include as an "employee" within 496

this chapter, any person excluded from the definition of 497  
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), (c), 498  
or (e) of this section in accordance with rules adopted by the 499  
administrator, with the advice and consent of the bureau of 500  
workers' compensation board of directors. If an employer is a 501  
partnership, sole proprietorship, individual incorporated as a 502  
corporation, or family farm corporation, such employer may elect 503  
to include as an "employee" within this chapter, any member of 504  
such partnership, the owner of the sole proprietorship, the 505  
individual incorporated as a corporation, or the officers of the 506  
family farm corporation. Nothing in this section shall prohibit a 507  
partner, sole proprietor, or any person excluded from the 508  
definition of "employee" pursuant to division (A)(2)(a), (b), (c), 509  
or (e) of this section from electing to be included as an 510  
"employee" under this chapter in accordance with rules adopted by 511  
the administrator, with the advice and consent of the board. 512

In the event of an election, the employer or person electing 513  
coverage shall serve upon the bureau of workers' compensation 514  
written notice naming the person to be covered and include the 515  
person's remuneration for premium purposes in all future payroll 516  
reports. No partner, sole proprietor, or person excluded from the 517  
definition of "employee" pursuant to division (A)(1)(d) or 518  
(A)(2)(a), (b), (c), or (e) of this section, shall receive 519  
benefits or compensation under this chapter until the bureau 520  
receives written notice of the election permitted by this section. 521

For informational purposes only, the bureau shall prescribe 522  
such language as it considers appropriate, on such of its forms as 523  
it considers appropriate, to advise employers of their right to 524  
elect to include as an "employee" within this chapter a sole 525  
proprietor, any member of a partnership, or a person excluded from 526  
the definition of "employee" under division (A)(1)(d) or 527  
(A)(2)(a), (b), (c), or (e) of this section, that they should 528

check any health and disability insurance policy, or other form of 529  
health and disability plan or contract, presently covering them, 530  
or the purchase of which they may be considering, to determine 531  
whether such policy, plan, or contract excludes benefits for 532  
illness or injury that they might have elected to have covered by 533  
workers' compensation. 534

(B)(1) "Employer" means: 535

(a) The state, including state hospitals, each county, 536  
municipal corporation, township, school district, and hospital 537  
owned by a political subdivision or subdivisions other than the 538  
state; 539

(b) Every person, firm, professional employer organization, 540  
and private corporation, including any public service corporation, 541  
that (i) has in service one or more employees or shared employees 542  
regularly in the same business or in or about the same 543  
establishment under any contract of hire, express or implied, oral 544  
or written, or (ii) is bound by any such contract of hire or by 545  
any other written contract, to pay into the insurance fund the 546  
premiums provided by this chapter. 547

All such employers are subject to this chapter. Any member of 548  
a firm or association, who regularly performs manual labor in or 549  
about a mine, factory, or other establishment, including a 550  
household establishment, shall be considered an employee in 551  
determining whether such person, firm, or private corporation, or 552  
public service corporation, has in its service, one or more 553  
employees and the employer shall report the income derived from 554  
such labor to the bureau as part of the payroll of such employer, 555  
and such member shall thereupon be entitled to all the benefits of 556  
an employee. 557

(2) "Employer" does not include a franchisor with respect to 558  
the franchisor's relationship with a franchisee or an employee of 559

a franchisee, unless the franchisor agrees to assume that role in 560  
writing or a court of competent jurisdiction determines that the 561  
franchisor exercises a type or degree of control over the 562  
franchisee or the franchisee's employees that is not customarily 563  
exercised by a franchisor for the purpose of protecting the 564  
franchisor's trademark, brand, or both. For purposes of this 565  
division, "franchisor" and "franchisee" have the same meanings as 566  
in 16 C.F.R. 436.1. 567

(C) "Injury" includes any injury, whether caused by external 568  
accidental means or accidental in character and result, received 569  
in the course of, and arising out of, the injured employee's 570  
employment. "Injury" does not include: 571

(1) Psychiatric conditions except ~~where~~ as follows: 572

(a) Where the claimant's psychiatric conditions have arisen 573  
from an injury or occupational disease sustained by that claimant 574  
~~or where~~; 575

(b) Where the claimant's psychiatric conditions have arisen 576  
from sexual conduct in which the claimant was forced by threat of 577  
physical harm to engage or participate; 578

(c) Where the claimant is a peace officer, firefighter, or 579  
emergency medical worker and is diagnosed with post-traumatic 580  
stress disorder that has been received in the course of, and has 581  
arisen out of, the claimant's employment as a peace officer, 582  
firefighter, or emergency medical worker. 583

(2) Injury or disability caused primarily by the natural 584  
deterioration of tissue, an organ, or part of the body; 585

(3) Injury or disability incurred in voluntary participation 586  
in an employer-sponsored recreation or fitness activity if the 587  
employee signs a waiver of the employee's right to compensation or 588  
benefits under this chapter prior to engaging in the recreation or 589  
fitness activity; 590

(4) A condition that pre-existed an injury unless that 591  
pre-existing condition is substantially aggravated by the injury. 592  
Such a substantial aggravation must be documented by objective 593  
diagnostic findings, objective clinical findings, or objective 594  
test results. Subjective complaints may be evidence of such a 595  
substantial aggravation. However, subjective complaints without 596  
objective diagnostic findings, objective clinical findings, or 597  
objective test results are insufficient to substantiate a 598  
substantial aggravation. 599

(D) "Child" includes a posthumous child and a child legally 600  
adopted prior to the injury. 601

(E) "Family farm corporation" means a corporation founded for 602  
the purpose of farming agricultural land in which the majority of 603  
the voting stock is held by and the majority of the stockholders 604  
are persons or the spouse of persons related to each other within 605  
the fourth degree of kinship, according to the rules of the civil 606  
law, and at least one of the related persons is residing on or 607  
actively operating the farm, and none of whose stockholders are a 608  
corporation. A family farm corporation does not cease to qualify 609  
under this division where, by reason of any devise, bequest, or 610  
the operation of the laws of descent or distribution, the 611  
ownership of shares of voting stock is transferred to another 612  
person, as long as that person is within the degree of kinship 613  
stipulated in this division. 614

(F) "Occupational disease" means a disease contracted in the 615  
course of employment, which by its causes and the characteristics 616  
of its manifestation or the condition of the employment results in 617  
a hazard which distinguishes the employment in character from 618  
employment generally, and the employment creates a risk of 619  
contracting the disease in greater degree and in a different 620  
manner from the public in general. 621

(G) "Self-insuring employer" means an employer who is granted 622

the privilege of paying compensation and benefits directly under 623  
section 4123.35 of the Revised Code, including a board of county 624  
commissioners for the sole purpose of constructing a sports 625  
facility as defined in section 307.696 of the Revised Code, 626  
provided that the electors of the county in which the sports 627  
facility is to be built have approved construction of a sports 628  
facility by ballot election no later than November 6, 1997. 629

(H) "Private employer" means an employer as defined in 630  
division (B)(1)(b) of this section. 631

(I) "Professional employer organization" has the same meaning 632  
as in section 4125.01 of the Revised Code. 633

(J) "Public employer" means an employer as defined in 634  
division (B)(1)(a) of this section. 635

(K) "Sexual conduct" means vaginal intercourse between a male 636  
and female; anal intercourse, fellatio, and cunnilingus between 637  
persons regardless of gender; and, without privilege to do so, the 638  
insertion, however slight, of any part of the body or any 639  
instrument, apparatus, or other object into the vaginal or anal 640  
cavity of another. Penetration, however slight, is sufficient to 641  
complete vaginal or anal intercourse. 642

(L) "Other-states' insurer" means an insurance company that 643  
is authorized to provide workers' compensation insurance coverage 644  
in any of the states that permit employers to obtain insurance for 645  
workers' compensation claims through insurance companies. 646

(M) "Other-states' coverage" means both of the following: 647

(1) Insurance coverage secured by an eligible employer for 648  
workers' compensation claims of employees who are in employment 649  
relationships localized in a state other than this state or those 650  
employees' dependents; 651

(2) Insurance coverage secured by an eligible employer for 652

workers' compensation claims that arise in a state other than this 653  
state where an employer elects to obtain coverage through either 654  
the administrator or an other-states' insurer. 655

(N) "Limited other-states coverage" means insurance coverage 656  
provided by the administrator to an eligible employer for workers' 657  
compensation claims of employees who are in an employment 658  
relationship localized in this state but are temporarily working 659  
in a state other than this state, or those employees' dependents. 660

(O) "Motor carrier" has the same meaning as in section 661  
4923.01 of the Revised Code. 662

(P) "Peace officer" has the same meaning as in section 663  
2935.01 of the Revised Code. 664

(O) "Firefighter" means a firefighter, whether paid or 665  
volunteer, of a lawfully constituted fire department. 666

(R) "Emergency medical worker" means a first responder, 667  
emergency medical technician-basic, emergency medical 668  
technician-intermediate, or emergency medical 669  
technician-paramedic, certified under Chapter 4765. of the Revised 670  
Code, whether paid or volunteer. 671

**Sec. 4123.026.** (A) The administrator of workers' 672  
compensation, ~~or~~ a self-insuring public employer for the peace 673  
officers, firefighters, and emergency medical workers employed by 674  
or volunteering for that self-insuring public employer, or a 675  
detention facility that is a self-insuring employer for the 676  
facility's employees, including corrections officers, shall pay 677  
the costs of conducting post-exposure medical diagnostic services, 678  
consistent with the standards of medical care existing at the time 679  
of the exposure, to investigate whether an injury or occupational 680  
disease was sustained by a peace officer, firefighter, ~~or~~ 681  
emergency medical worker, or detention facility employee, 682

including a corrections officer, when coming into contact with the 683  
blood or other body fluid of another person in the course of and 684  
arising out of the peace officer's, firefighter's, ~~or~~ emergency 685  
medical worker's, or detention facility employee's employment, or 686  
when responding to an inherently dangerous situation in the manner 687  
described in, and in accordance with the conditions specified 688  
under, division (A)(1)(a) of section 4123.01 of the Revised Code, 689  
through any of the following means: 690

(1) Splash or spatter in the eye or mouth, including when 691  
received in the course of conducting mouth-to-mouth resuscitation; 692

(2) A puncture in the skin; 693

(3) A cut in the skin or another opening in the skin such as 694  
an open sore, wound, lesion, abrasion, or ulcer. 695

(B) As used in this section: 696

(1) ~~"Peace officer" has the same meaning as in section 697  
2935.01 of the Revised Code.~~ 698

~~(2) "Firefighter" means a firefighter, whether paid or 699  
volunteer, of a lawfully constituted fire department.~~ 700

~~(3) "Emergency medical worker" means a first responder, 701  
emergency medical technician basic, emergency medical 702  
technician intermediate, or emergency medical 703  
technician paramedic, certified under Chapter 4765. of the Revised 704  
Code, whether paid or volunteer 705~~

"Corrections officer" means a person employed by a detention 706  
facility as a corrections officer. 707

(2) "Detention facility" means any public or private place 708  
used for the confinement of a person charged with or convicted of 709  
any crime in this state or another state or under the laws of the 710  
United States or alleged or found to be a delinquent child or 711  
unruly child in this state or another state or under the laws of 712

the United States. 713

**Sec. 4123.038.** As used in this section and section 4123.039 714  
of the Revised Code: 715

(A) "Apprentice" and "apprenticeship agreement" have the 716  
meaning defined in section ~~4111.25~~ 4139.01 of the Revised Code. 717

(B) "Related and supplemental instructions" means training 718  
offered, conducted, supervised, or given under the sponsorship of 719  
any joint apprenticeship committee or other sponsoring 720  
organization to apprentices, which training is given in addition 721  
to the approved schedule of work experience through employment, 722  
and which is to be credited towards the minimum hours of related 723  
and supplemental instructions required by section 4139.01 of the 724  
Revised Code. 725

(C) "Pre-apprentice" means a person who receives formal 726  
classroom training designed to provide the person with the basic 727  
education, attitudes, skills, trade knowledge, and motivation 728  
necessary to enter a formal apprenticeship program. 729

(D) "Entry-level trainee" means a person who possesses 730  
experience that would qualify the person as a journeyman but 731  
for the existence of certain other disqualifying conditions and 732  
who receives on-the-job training accompanied by classroom 733  
instruction outside of normal working hours. 734

(E) "Journeyman trainee" means a person with journeyman 735  
status in a given trade who receives classroom and laboratory 736  
training for the purpose of broadening the person's skills and 737  
acquainting the person with new techniques and ideas in the trade. 738

**Sec. 4123.46.** (A)(1) Except as provided in division (A)(2) of 739  
this section, the bureau of workers' compensation shall disburse 740  
the state insurance fund to employees of employers who have paid 741  
into the fund the premiums applicable to the classes to which they 742

belong when the employees have been injured in the course of their 743  
employment, wherever the injuries have occurred, and provided the 744  
injuries have not been purposely self-inflicted, or to the 745  
dependents of the employees in case death has ensued. 746

(2) As long as injuries have not been purposely 747  
self-inflicted, the bureau shall disburse the surplus fund created 748  
under section 4123.34 of the Revised Code to off-duty peace 749  
officers, firefighters, and emergency medical technicians, ~~and~~ 750  
~~first responders~~ workers, or to their dependents if death ensues, 751  
who are injured while responding to inherently dangerous 752  
situations that call for an immediate response on the part of the 753  
person, regardless of whether the person was within the limits of 754  
the person's jurisdiction when responding, on the condition that 755  
the person responds to the situation as the person otherwise would 756  
if the person were on duty in the person's jurisdiction. 757

~~As used in division (A)(2) of this section, "peace officer," 758  
"firefighter," "emergency medical technician," "first responder," 759  
and "jurisdiction" have the same meanings as in section 4123.01 of 760  
the Revised Code. 761~~

(B) All self-insuring employers, in compliance with this 762  
chapter, shall pay the compensation to injured employees, or to 763  
the dependents of employees who have been killed in the course of 764  
their employment, unless the injury or death of the employee was 765  
purposely self-inflicted, and shall furnish the medical, surgical, 766  
nurse, and hospital care and attention or funeral expenses as 767  
would have been paid and furnished by virtue of this chapter under 768  
a similar state of facts by the bureau out of the state insurance 769  
fund if the employer had paid the premium into the fund. 770

If any rule or regulation of a self-insuring employer 771  
provides for or authorizes the payment of greater compensation or 772  
more complete or extended medical care, nursing, surgical, and 773  
hospital attention, or funeral expenses to the injured employees, 774

or to the dependents of the employees as may be killed, the 775  
employer shall pay to the employees, or to the dependents of 776  
employees killed, the amount of compensation and furnish the 777  
medical care, nursing, surgical, and hospital attention or funeral 778  
expenses provided by the self-insuring employer's rules and 779  
regulations. 780

(C) Payment to injured employees, or to their dependents in 781  
case death has ensued, is in lieu of any and all rights of action 782  
against the employer of the injured or killed employees. 783

**Sec. 4123.52.** (A) The jurisdiction of the industrial 784  
commission and the authority of the administrator of workers' 785  
compensation over each case is continuing, and the commission may 786  
make such modification or change with respect to former findings 787  
or orders with respect thereto, as, in its opinion is justified. 788  
No modification or change nor any finding or award in respect of 789  
any claim shall be made with respect to disability, compensation, 790  
dependency, or benefits, after five years from the date of injury 791  
in the absence of ~~the payment of~~ medical benefits being provided 792  
under this chapter or in the absence of payment of compensation 793  
under section 4123.57, 4123.58, or division (A) or (B) of section 794  
4123.56 of the Revised Code or wages in lieu of compensation in a 795  
manner so as to satisfy the requirements of section 4123.84 of the 796  
Revised Code, in which event the modification, change, finding, or 797  
award shall be made within five years from the date of the last 798  
medical services being rendered or the date of the last payment of 799  
compensation or from the date of death, nor unless written notice 800  
of claim for the specific part or parts of the body injured or 801  
disabled has been given as provided in section 4123.84 or 4123.85 802  
of the Revised Code. The commission shall not make any 803  
modification, change, finding, or award which shall award 804  
compensation for a back period in excess of two years prior to the 805  
date of filing application therefor. 806

(B) Notwithstanding division (A) of this section, and except 807  
as otherwise provided in a rule that shall be adopted by the 808  
administrator, with the advice and consent of the bureau of 809  
workers' compensation board of directors, neither the 810  
administrator nor the commission shall make any finding or award 811  
for payment of medical or vocational rehabilitation services 812  
submitted for payment more than one year after the date the 813  
services were rendered or more than one year after the date the 814  
services became payable under division (I) of section 4123.511 of 815  
the Revised Code, whichever is later. No medical or vocational 816  
rehabilitation provider shall bill a claimant for services 817  
rendered if the administrator or commission is prohibited from 818  
making that payment under this division. 819

(C) Division (B) of this section does not apply to requests 820  
made by the centers for medicare and medicaid services in the 821  
United States department of health and human services for 822  
reimbursement of conditional payments made pursuant to section 823  
1395y(b)(2) of title 42, United States Code (commonly known as the 824  
"Medicare Secondary Payer Act"). 825

(D) This section does not affect the right of a claimant to 826  
compensation accruing subsequent to the filing of any such 827  
application, provided the application is filed within the time 828  
limit provided in this section. 829

(E) This section does not deprive the commission of its 830  
continuing jurisdiction to determine the questions raised by any 831  
application for modification of award which has been filed with 832  
the commission after June 1, 1932, and prior to the expiration of 833  
the applicable period but in respect to which no award has been 834  
granted or denied during the applicable period. 835

(F) The commission may, by general rules, provide for the 836  
destruction of files of cases in which no further action may be 837  
taken. 838

(G) The commission and administrator of workers' compensation 839  
each may, by general rules, provide for the retention and 840  
destruction of all other records in their possession or under 841  
their control pursuant to section 121.211 and sections 149.34 to 842  
149.36 of the Revised Code. The bureau of workers' compensation 843  
may purchase or rent required equipment for the document retention 844  
media, as determined necessary to preserve the records. 845  
Photographs, microphotographs, microfilm, films, or other direct 846  
document retention media, when properly identified, have the same 847  
effect as the original record and may be offered in like manner 848  
and may be received as evidence in proceedings before the 849  
industrial commission, staff hearing officers, and district 850  
hearing officers, and in any court where the original record could 851  
have been introduced. 852

**Sec. 4123.56.** (A) Except as provided in division (D) of this 853  
section, in the case of temporary disability, an employee shall 854  
receive sixty-six and two-thirds per cent of the employee's 855  
average weekly wage so long as such disability is total, not to 856  
exceed a maximum amount of weekly compensation which is equal to 857  
the statewide average weekly wage as defined in division (C) of 858  
section 4123.62 of the Revised Code, and not less than a minimum 859  
amount of compensation which is equal to thirty-three and 860  
one-third per cent of the statewide average weekly wage as defined 861  
in division (C) of section 4123.62 of the Revised Code unless the 862  
employee's wage is less than thirty-three and one-third per cent 863  
of the minimum statewide average weekly wage, in which event the 864  
employee shall receive compensation equal to the employee's full 865  
wages; provided that for the first twelve weeks of total 866  
disability the employee shall receive seventy-two per cent of the 867  
employee's full weekly wage, but not to exceed a maximum amount of 868  
weekly compensation which is equal to the lesser of the statewide 869  
average weekly wage as defined in division (C) of section 4123.62 870

of the Revised Code or one hundred per cent of the employee's net 871  
take-home weekly wage. In the case of a self-insuring employer, 872  
payments shall be for a duration based upon the medical reports of 873  
the attending physician. If the employer disputes the attending 874  
physician's report, payments may be terminated only upon 875  
application and hearing by a district hearing officer pursuant to 876  
division (C) of section 4123.511 of the Revised Code. Payments 877  
shall continue pending the determination of the matter, however 878  
payment shall not be made for the period when any employee has 879  
returned to work, when an employee's treating physician has made a 880  
written statement that the employee is capable of returning to the 881  
employee's former position of employment, when work within the 882  
physical capabilities of the employee is made available by the 883  
employer or another employer, or when the employee has reached the 884  
maximum medical improvement. Where the employee is capable of work 885  
activity, but the employee's employer is unable to offer the 886  
employee any employment, the employee shall register with the 887  
director of job and family services, who shall assist the employee 888  
in finding suitable employment. The termination of temporary total 889  
disability, whether by order or otherwise, does not preclude the 890  
commencement of temporary total disability at another point in 891  
time if the employee again becomes temporarily totally disabled. 892

After two hundred weeks of temporary total disability 893  
benefits, the medical section of the bureau of workers' 894  
compensation shall schedule the claimant for an examination for an 895  
evaluation to determine whether or not the temporary disability 896  
has become permanent. A self-insuring employer shall notify the 897  
bureau immediately after payment of two hundred weeks of temporary 898  
total disability and request that the bureau schedule the claimant 899  
for such an examination. 900

When the employee is awarded compensation for temporary total 901  
disability for a period for which the employee has received 902

benefits under Chapter 4141. of the Revised Code, the bureau shall 903  
pay an amount equal to the amount received from the award to the 904  
director of job and family services and the director shall credit 905  
the amount to the accounts of the employers to whose accounts the 906  
payment of benefits was charged or is chargeable to the extent it 907  
was charged or is chargeable. 908

If any compensation under this section has been paid for the 909  
same period or periods for which temporary nonoccupational 910  
accident and sickness insurance is or has been paid pursuant to an 911  
insurance policy or program to which the employer has made the 912  
entire contribution or payment for providing insurance or under a 913  
nonoccupational accident and sickness program fully funded by the 914  
employer, except as otherwise provided in this division 915  
compensation paid under this section for the period or periods 916  
shall be paid only to the extent by which the payment or payments 917  
exceeds the amount of the nonoccupational insurance or program 918  
paid or payable. Offset of the compensation shall be made only 919  
upon the prior order of the bureau or industrial commission or 920  
agreement of the claimant. If an employer provides supplemental 921  
sick leave benefits in addition to temporary total disability 922  
compensation paid under this section, and if the employer and an 923  
employee agree in writing to the payment of the supplemental sick 924  
leave benefits, temporary total disability benefits may be paid 925  
without an offset for those supplemental sick leave benefits. 926

Except as otherwise provided in a collective bargaining 927  
agreement, if an employee's temporary total disability 928  
compensation is offset by an amount paid to the employee for 929  
accrued sick leave, the employer shall do either of the following: 930

(1) Reinstate the sick leave that offset the employee's 931  
temporary total disability compensation; 932

(2) Pay the employee the amount by which the employee's 933  
temporary total compensation was offset by the sick leave. 934

As used in this division, "net take-home weekly wage" means 935  
the amount obtained by dividing an employee's total remuneration, 936  
as defined in section 4141.01 of the Revised Code, paid to or 937  
earned by the employee during the first four of the last five 938  
completed calendar quarters which immediately precede the first 939  
day of the employee's entitlement to benefits under this division, 940  
by the number of weeks during which the employee was paid or 941  
earned remuneration during those four quarters, less the amount of 942  
local, state, and federal income taxes deducted for each such 943  
week. 944

(B)(1) If an employee in a claim allowed under this chapter 945  
suffers a wage loss as a result of returning to employment other 946  
than the employee's former position of employment due to an injury 947  
or occupational disease, the employee shall receive compensation 948  
at sixty-six and two-thirds per cent of the difference between the 949  
employee's average weekly wage and the employee's present earnings 950  
not to exceed the statewide average weekly wage. The payments may 951  
continue for up to a maximum of two hundred weeks, but the 952  
payments shall be reduced by the corresponding number of weeks in 953  
which the employee receives payments pursuant to division (A)(2) 954  
of section 4121.67 of the Revised Code. 955

(2) If an employee in a claim allowed under this chapter 956  
suffers a wage loss as a result of being unable to find employment 957  
consistent with the employee's disability resulting from the 958  
employee's injury or occupational disease, the employee shall 959  
receive compensation at sixty-six and two-thirds per cent of the 960  
difference between the employee's average weekly wage and the 961  
employee's present earnings, not to exceed the statewide average 962  
weekly wage. The payments may continue for up to a maximum of 963  
fifty-two weeks. The first twenty-six weeks of payments under 964  
division (B)(2) of this section shall be in addition to the 965  
maximum of two hundred weeks of payments allowed under division 966

(B)(1) of this section. If an employee in a claim allowed under 967  
this chapter receives compensation under division (B)(2) of this 968  
section in excess of twenty-six weeks, the number of weeks of 969  
compensation allowable under division (B)(1) of this section shall 970  
be reduced by the corresponding number of weeks in excess of 971  
twenty-six, and up to fifty-two, that is allowable under division 972  
(B)(1) of this section. 973

(3) The number of weeks of wage loss payable to an employee 974  
under divisions (B)(1) and (2) of this section shall not exceed 975  
two hundred and twenty-six weeks in the aggregate. 976

(C) In the event an employee of a professional sports 977  
franchise domiciled in this state is disabled as the result of an 978  
injury or occupational disease, the total amount of payments made 979  
under a contract of hire or collective bargaining agreement to the 980  
employee during a period of disability is deemed an advanced 981  
payment of compensation payable under sections 4123.56 to 4123.58 982  
of the Revised Code. The employer shall be reimbursed the total 983  
amount of the advanced payments out of any award of compensation 984  
made pursuant to sections 4123.56 to 4123.58 of the Revised Code. 985

(D) If an employee receives temporary total disability 986  
benefits pursuant to division (A) of this section and social 987  
security retirement benefits pursuant to the "Social Security 988  
Act," the weekly benefit amount under division (A) of this section 989  
shall not exceed sixty-six and two-thirds per cent of the 990  
statewide average weekly wage as defined in division (C) of 991  
section 4123.62 of the Revised Code. 992

(E) If an employee is eligible for compensation under 993  
division (A) of this section, but the employee's full weekly wage 994  
has not been determined at the time payments are to commence under 995  
division (H) of section 4123.511 of the Revised Code, the employee 996  
shall receive thirty-three and one-third per cent of the statewide 997  
average weekly wage as defined in division (C) of section 4123.62 998

of the Revised Code. On determination of the employee's full 999  
weekly wage, the compensation an employee receives shall be 1000  
adjusted pursuant to division (A) of this section. 1001

If the amount of compensation an employee receives under this 1002  
division is greater than the adjusted amount the employee receives 1003  
under division (A) of this section that is based on the employee's 1004  
full weekly wage, the excess amount shall be recovered in the 1005  
manner provided in division (K) of section 4123.511 of the Revised 1006  
Code. If the amount of compensation an employee receives under 1007  
this division is less than the adjusted amount the employee 1008  
receives under that division that is based on the employee's full 1009  
weekly wage, the employee shall receive the difference between 1010  
those two amounts. 1011

(F) If an employee is unable to work or suffers a wage loss 1012  
as the direct result of a disability arising from an injury or 1013  
occupational disease, the employee is entitled to receive 1014  
compensation under this section, provided the employee is 1015  
otherwise qualified. If an employee is not working or has suffered 1016  
a wage loss as the direct result of something other than a 1017  
disability arising from an injury or occupational disease, the 1018  
employee is not eligible to receive compensation under this 1019  
section. It is the intent of the general assembly to supersede any 1020  
previous judicial decision that applied the doctrine of voluntary 1021  
abandonment to a claim brought under this section in a manner that 1022  
is inconsistent with this division. 1023

**Sec. 4123.58.** (A) In cases of permanent total disability, the 1024  
employee shall receive an award to continue until the employee's 1025  
death in the amount of sixty-six and two-thirds per cent of the 1026  
employee's average weekly wage, but, except as otherwise provided 1027  
in division (B) of this section, not more than a maximum amount of 1028  
weekly compensation which is equal to sixty-six and two-thirds per 1029

cent of the statewide average weekly wage as defined in division 1030  
(C) of section 4123.62 of the Revised Code in effect on the date 1031  
of injury or on the date the disability due to the occupational 1032  
disease begins, nor not less than a minimum amount of weekly 1033  
compensation which is equal to fifty per cent of the statewide 1034  
average weekly wage as defined in division (C) of section 4123.62 1035  
of the Revised Code in effect on the date of injury or on the date 1036  
the disability due to the occupational disease begins, unless the 1037  
employee's average weekly wage is less than fifty per cent of the 1038  
statewide average weekly wage at the time of the injury, in which 1039  
event the employee shall receive compensation in an amount equal 1040  
to the employee's average weekly wage. 1041

(B) In the event the weekly workers' compensation amount when 1042  
combined with disability benefits received pursuant to the Social 1043  
Security Act is less than the statewide average weekly wage as 1044  
defined in division (C) of section 4123.62 of the Revised Code, 1045  
then the maximum amount of weekly compensation shall be the 1046  
statewide average weekly wage as defined in division (C) of 1047  
section 4123.62 of the Revised Code. At any time that social 1048  
security disability benefits terminate or are reduced, the 1049  
workers' compensation award shall be recomputed to pay the maximum 1050  
amount permitted under this division. 1051

(C) Permanent total disability shall be compensated according 1052  
to this section only when at least one of the following applies to 1053  
the claimant: 1054

(1) The claimant has lost, or lost the use of both hands or 1055  
both arms, or both feet or both legs, or both eyes, or of any two 1056  
thereof; however, the loss or loss of use of one limb does not 1057  
constitute the loss or loss of use of two body parts; 1058

(2) The impairment resulting from the employee's injury or 1059  
occupational disease prevents the employee from engaging in 1060  
1061

sustained remunerative employment utilizing the employment skills 1062  
that the employee has or may reasonably be expected to develop. 1063

(D) Permanent total disability shall not be compensated when 1064  
the reason the employee is unable to engage in sustained 1065  
remunerative employment is due to any of the following reasons, 1066  
whether individually or in combination: 1067

(1) Impairments of the employee that are not the result of an 1068  
allowed injury or occupational disease; 1069

(2) Solely the employee's age or aging; 1070

(3) The employee retired ~~or otherwise voluntarily abandoned~~ 1071  
~~the workforce for reasons unrelated to the allowed injury or~~ 1072  
~~occupational disease.~~ 1073

(4) The employee has not engaged in educational or 1074  
rehabilitative efforts to enhance the employee's employability, 1075  
unless such efforts are determined to be in vain; 1076

(5) The employee is unable to engage in sustained 1077  
remunerative employment as the direct result of something other 1078  
than a disability arising from an injury or occupational disease. 1079

(E) Compensation payable under this section for permanent 1080  
total disability is in addition to benefits payable under division 1081  
(B) of section 4123.57 of the Revised Code. 1082

(F) If an employee is awarded compensation for permanent 1083  
total disability under this section because the employee sustained 1084  
a traumatic brain injury, the employee is entitled to that 1085  
compensation regardless of the employee's employment in a 1086  
sheltered workshop subsequent to the award, on the condition that 1087  
the employee does not receive income, compensation, or 1088  
remuneration from that employment in excess of two thousand 1089  
dollars in any calendar quarter. As used in this division, 1090  
"sheltered workshop" means a state agency or nonprofit 1091

organization established to carry out a program of rehabilitation 1092  
for handicapped individuals or to provide these individuals with 1093  
remunerative employment or other occupational rehabilitating 1094  
activity. 1095

**Sec. 4123.65.** (A) A state fund employer or the employee of 1096  
such an employer may file an application with the administrator of 1097  
workers' compensation for approval of a final settlement of a 1098  
claim under this chapter. The application shall include the 1099  
settlement agreement, and except as otherwise specified in this 1100  
division, be signed by the claimant and employer, and clearly set 1101  
forth the circumstances by reason of which the proposed settlement 1102  
is deemed desirable and that the parties agree to the terms of the 1103  
settlement agreement. A claimant may file an application without 1104  
an employer's signature in the following situations: 1105

(1) The employer is no longer doing business in Ohio; 1106

(2) The claim no longer is in the employer's industrial 1107  
accident or occupational disease experience as provided in 1108  
division (B) of section 4123.34 of the Revised Code and the 1109  
claimant no longer is employed with that employer; 1110

(3) The employer has failed to comply with section 4123.35 of 1111  
the Revised Code. 1112

If a claimant files an application without an employer's 1113  
signature, and the employer still is doing business in this state, 1114  
the administrator shall send written notice of the application to 1115  
the employer immediately upon receipt of the application. If the 1116  
employer fails to respond to the notice within thirty days after 1117  
the notice is sent, the application need not contain the 1118  
employer's signature. 1119

If a state fund employer or an employee of such an employer 1120  
has not filed an application for a final settlement under this 1121

division, the administrator may file an application on behalf of 1122  
the employer or the employee, provided that the administrator 1123  
gives notice of the filing to the employer and the employee and to 1124  
the representative of record of the employer and of the employee 1125  
immediately upon the filing. An application filed by the 1126  
administrator shall contain all of the information and signatures 1127  
required of an employer or an employee who files an application 1128  
under this division. Every self-insuring employer that enters into 1129  
a final settlement agreement with an employee shall mail, within 1130  
seven days of executing the agreement, a copy of the agreement to 1131  
the administrator and the employee's representative. The 1132  
administrator shall place the agreement into the claimant's file. 1133

(B) Except as provided in divisions (C) and (D) of this 1134  
section, a settlement agreed to under this section is binding upon 1135  
all parties thereto and as to items, injuries, and occupational 1136  
diseases to which the settlement applies. 1137

(C) No settlement agreed to under division (A) of this 1138  
section or agreed to by a self-insuring employer and the 1139  
self-insuring employer's employee shall take effect until thirty 1140  
days after the administrator approves the settlement for state 1141  
fund employees and employers, or after the self-insuring employer 1142  
and employee sign the final settlement agreement. ~~During~~ Except as 1143  
otherwise provided in division (G) of this section, during the 1144  
thirty-day period, the employer, employee, or administrator, for 1145  
state fund settlements, and the employer or employee, for 1146  
self-insuring settlements, may withdraw consent to the settlement 1147  
by an employer providing written notice to the employer's employee 1148  
and the administrator or by an employee providing written notice 1149  
to the employee's employer and the administrator, or by the 1150  
administrator providing written notice to the state fund employer 1151  
and employee. If an employee dies during the thirty-day waiting 1152  
period following the approval of a settlement, the settlement can 1153

be voided by any party for good cause shown. 1154

(D) At the time of agreement to any final settlement 1155  
agreement under division (A) of this section or agreement between 1156  
a self-insuring employer and the self-insuring employer's 1157  
employee, the administrator, for state fund settlements, and the 1158  
self-insuring employer, for self-insuring settlements, immediately 1159  
shall send a copy of the agreement to the industrial commission 1160  
who shall assign the matter to a staff hearing officer. The staff 1161  
hearing officer shall determine, within the time limitations 1162  
specified in division (C) of this section, whether the settlement 1163  
agreement is or is not a gross miscarriage of justice. If the 1164  
staff hearing officer determines within that time period that the 1165  
settlement agreement is clearly unfair, the staff hearing officer 1166  
shall issue an order disapproving the settlement agreement. If the 1167  
staff hearing officer determines that the settlement agreement is 1168  
not clearly unfair or fails to act within those time limits, the 1169  
settlement agreement is approved. 1170

(E) A settlement entered into under this section may pertain 1171  
to one or more claims of a claimant, or one or more parts of a 1172  
claim, or the compensation or benefits pertaining to either, or 1173  
any combination thereof, provided that nothing in this section 1174  
shall be interpreted to require a claimant to enter into a 1175  
settlement agreement for every claim that has been filed with the 1176  
bureau of workers' compensation by that claimant under Chapter 1177  
4121., 4123., 4127., or 4131. of the Revised Code. 1178

(F) A settlement entered into under this section is not 1179  
appealable under section 4123.511 or 4123.512 of the Revised Code. 1180

(G) Notwithstanding any provision of the Revised Code to the 1181  
contrary, if a settlement application is filed under this section 1182  
regarding a claim that is no longer in an employer's industrial 1183  
accident or occupational disease experience as provided in 1184  
division (B) of section 4123.34 of the Revised Code, the employer 1185

shall not deny consent or withdraw consent regarding that 1186  
settlement application. 1187

(H) An employer shall not require an employee to terminate 1188  
the employee's employment with the employer as a condition of 1189  
entering into a settlement agreement under this section. 1190

**Sec. 4141.01.** As used in this chapter, unless the context 1191  
otherwise requires: 1192

(A)(1) "Employer" means the state, its instrumentalities, its 1193  
political subdivisions and their instrumentalities, Indian tribes, 1194  
and any individual or type of organization including any 1195  
partnership, limited liability company, association, trust, 1196  
estate, joint-stock company, insurance company, or corporation, 1197  
whether domestic or foreign, or the receiver, trustee in 1198  
bankruptcy, trustee, or the successor thereof, or the legal 1199  
representative of a deceased person who subsequent to December 31, 1200  
1971, or in the case of political subdivisions or their 1201  
instrumentalities, subsequent to December 31, 1973: 1202

(a) Had in employment at least one individual, or in the case 1203  
of a nonprofit organization, subsequent to December 31, 1973, had 1204  
not less than four individuals in employment for some portion of a 1205  
day in each of twenty different calendar weeks, in either the 1206  
current or the preceding calendar year whether or not the same 1207  
individual was in employment in each such day; or 1208

(b) Except for a nonprofit organization, had paid for service 1209  
in employment wages of fifteen hundred dollars or more in any 1210  
calendar quarter in either the current or preceding calendar year; 1211  
or 1212

(c) Had paid, subsequent to December 31, 1977, for employment 1213  
in domestic service in a local college club, or local chapter of a 1214  
college fraternity or sorority, cash remuneration of one thousand 1215

dollars or more in any calendar quarter in the current calendar 1216  
year or the preceding calendar year, or had paid subsequent to 1217  
December 31, 1977, for employment in domestic service in a private 1218  
home cash remuneration of one thousand dollars in any calendar 1219  
quarter in the current calendar year or the preceding calendar 1220  
year: 1221

(i) For the purposes of divisions (A)(1)(a) and (b) of this 1222  
section, there shall not be taken into account any wages paid to, 1223  
or employment of, an individual performing domestic service as 1224  
described in this division. 1225

(ii) An employer under this division shall not be an employer 1226  
with respect to wages paid for any services other than domestic 1227  
service unless the employer is also found to be an employer under 1228  
division (A)(1)(a), (b), or (d) of this section. 1229

(d) As a farm operator or a crew leader subsequent to 1230  
December 31, 1977, had in employment individuals in agricultural 1231  
labor; and 1232

(i) During any calendar quarter in the current calendar year 1233  
or the preceding calendar year, paid cash remuneration of twenty 1234  
thousand dollars or more for the agricultural labor; or 1235

(ii) Had at least ten individuals in employment in 1236  
agricultural labor, not including agricultural workers who are 1237  
aliens admitted to the United States to perform agricultural labor 1238  
pursuant to sections 1184(c) and 1101(a)(15)(H) of the 1239  
"Immigration and Nationality Act," 66 Stat. 163, 189, 8 U.S.C.A. 1240  
1101(a)(15)(H)(ii)(a), 1184(c), for some portion of a day in each 1241  
of the twenty different calendar weeks, in either the current or 1242  
preceding calendar year whether or not the same individual was in 1243  
employment in each day; or 1244

(e) Is not otherwise an employer as defined under division 1245  
(A)(1)(a) or (b) of this section; and 1246

(i) For which, within either the current or preceding 1247  
calendar year, service, except for domestic service in a private 1248  
home not covered under division (A)(1)(c) of this section, is or 1249  
was performed with respect to which such employer is liable for 1250  
any federal tax against which credit may be taken for 1251  
contributions required to be paid into a state unemployment fund; 1252

(ii) Which, as a condition for approval of this chapter for 1253  
full tax credit against the tax imposed by the "Federal 1254  
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, is 1255  
required, pursuant to such act to be an employer under this 1256  
chapter; or 1257

(iii) Who became an employer by election under division 1258  
(A)(4) or (5) of this section and for the duration of such 1259  
election; or 1260

(f) In the case of the state, its instrumentalities, its 1261  
political subdivisions, and their instrumentalities, and Indian 1262  
tribes, had in employment, as defined in divisions (B)(2)(a) and 1263  
(B)(2)(1) of this section, at least one individual; 1264

(g) For the purposes of division (A)(1)(a) of this section, 1265  
if any week includes both the thirty-first day of December and the 1266  
first day of January, the days of that week before the first day 1267  
of January shall be considered one calendar week and the days 1268  
beginning the first day of January another week. 1269

(2) Each individual employed to perform or to assist in 1270  
performing the work of any agent or employee of an employer is 1271  
employed by such employer for all the purposes of this chapter, 1272  
whether such individual was hired or paid directly by such 1273  
employer or by such agent or employee, provided the employer had 1274  
actual or constructive knowledge of the work. All individuals 1275  
performing services for an employer of any person in this state 1276  
who maintains two or more establishments within this state are 1277

employed by a single employer for the purposes of this chapter. 1278

(3) An employer subject to this chapter within any calendar 1279  
year is subject to this chapter during the whole of such year and 1280  
during the next succeeding calendar year. 1281

(4) An employer not otherwise subject to this chapter who 1282  
files with the director of job and family services a written 1283  
election to become an employer subject to this chapter for not 1284  
less than two calendar years shall, with the written approval of 1285  
such election by the director, become an employer subject to this 1286  
chapter to the same extent as all other employers as of the date 1287  
stated in such approval, and shall cease to be subject to this 1288  
chapter as of the first day of January of any calendar year 1289  
subsequent to such two calendar years only if at least thirty days 1290  
prior to such first day of January the employer has filed with the 1291  
director a written notice to that effect. 1292

(5) Any employer for whom services that do not constitute 1293  
employment are performed may file with the director a written 1294  
election that all such services performed by individuals in the 1295  
employer's employ in one or more distinct establishments or places 1296  
of business shall be deemed to constitute employment for all the 1297  
purposes of this chapter, for not less than two calendar years. 1298  
Upon written approval of the election by the director, such 1299  
services shall be deemed to constitute employment subject to this 1300  
chapter from and after the date stated in such approval. Such 1301  
services shall cease to be employment subject to this chapter as 1302  
of the first day of January of any calendar year subsequent to 1303  
such two calendar years only if at least thirty days prior to such 1304  
first day of January such employer has filed with the director a 1305  
written notice to that effect. 1306

(6) "Employer" does not include a franchisor with respect to 1307  
the franchisor's relationship with a franchisee or an employee of 1308  
a franchisee, unless the franchisor agrees to assume that role in 1309

writing or a court of competent jurisdiction determines that the 1310  
franchisor exercises a type or degree of control over the 1311  
franchisee or the franchisee's employees that is not customarily 1312  
exercised by a franchisor for the purpose of protecting the 1313  
franchisor's trademark, brand, or both. For purposes of this 1314  
division, "franchisor" and "franchisee" have the same meanings as 1315  
in 16 C.F.R. 436.1. 1316

(B)(1) "Employment" means service performed by an individual 1317  
for remuneration under any contract of hire, written or oral, 1318  
express or implied, including service performed in interstate 1319  
commerce and service performed by an officer of a corporation, 1320  
without regard to whether such service is executive, managerial, 1321  
or manual in nature, and without regard to whether such officer is 1322  
a stockholder or a member of the board of directors of the 1323  
corporation, unless it is shown to the satisfaction of the 1324  
director, based upon a determination made by the superintendent of 1325  
industrial compliance under Chapter 4177. of the Revised Code, 1326  
that such individual has been and will continue to be free from 1327  
direction or control over the performance of such service, both 1328  
under a contract of service and in fact. ~~The director shall adopt~~ 1329  
~~rules to define "direction or control."~~ 1330

(2) "Employment" includes: 1331

(a) Service performed after December 31, 1977, by an 1332  
individual in the employ of the state or any of its 1333  
instrumentalities, or any political subdivision thereof or any of 1334  
its instrumentalities or any instrumentality of more than one of 1335  
the foregoing or any instrumentality of any of the foregoing and 1336  
one or more other states or political subdivisions and without 1337  
regard to divisions (A)(1)(a) and (b) of this section, provided 1338  
that such service is excluded from employment as defined in the 1339  
"Federal Unemployment Tax Act," 53 Stat. 183, 26 U.S.C.A. 3301, 1340  
3306(c)(7) and is not excluded under division (B)(3) of this 1341

section; or the services of employees covered by voluntary 1342  
election, as provided under divisions (A)(4) and (5) of this 1343  
section; 1344

(b) Service performed after December 31, 1971, by an 1345  
individual in the employ of a religious, charitable, educational, 1346  
or other organization which is excluded from the term "employment" 1347  
as defined in the "Federal Unemployment Tax Act," 84 Stat. 713, 26 1348  
U.S.C.A. 3301 to 3311, solely by reason of section 26 U.S.C.A. 1349  
3306(c)(8) of that act and is not excluded under division (B)(3) 1350  
of this section; 1351

(c) Domestic service performed after December 31, 1977, for 1352  
an employer, as provided in division (A)(1)(c) of this section; 1353

(d) Agricultural labor performed after December 31, 1977, for 1354  
a farm operator or a crew leader, as provided in division 1355  
(A)(1)(d) of this section; 1356

(e) Subject to division (B)(2)(m) of this section, service 1357  
not covered under division (B)(1) of this section which is 1358  
performed after December 31, 1971: 1359

(i) As an agent-driver or commission-driver engaged in 1360  
distributing meat products, vegetable products, fruit products, 1361  
bakery products, beverages other than milk, laundry, or 1362  
dry-cleaning services, for the individual's employer or principal; 1363

(ii) As a traveling or city salesperson, other than as an 1364  
agent-driver or commission-driver, engaged on a full-time basis in 1365  
the solicitation on behalf of and in the transmission to the 1366  
salesperson's employer or principal except for sideline sales 1367  
activities on behalf of some other person of orders from 1368  
wholesalers, retailers, contractors, or operators of hotels, 1369  
restaurants, or other similar establishments for merchandise for 1370  
resale, or supplies for use in their business operations, provided 1371  
that for the purposes of division (B)(2)(e)(ii) of this section, 1372

the services shall be deemed employment if the contract of service 1373  
contemplates that substantially all of the services are to be 1374  
performed personally by the individual and that the individual 1375  
does not have a substantial investment in facilities used in 1376  
connection with the performance of the services other than in 1377  
facilities for transportation, and the services are not in the 1378  
nature of a single transaction that is not a part of a continuing 1379  
relationship with the person for whom the services are performed. 1380

(f) An individual's entire service performed within or both 1381  
within and without the state if: 1382

(i) The service is localized in this state. 1383

(ii) The service is not localized in any state, but some of 1384  
the service is performed in this state and either the base of 1385  
operations, or if there is no base of operations then the place 1386  
from which such service is directed or controlled, is in this 1387  
state or the base of operations or place from which such service 1388  
is directed or controlled is not in any state in which some part 1389  
of the service is performed but the individual's residence is in 1390  
this state. 1391

(g) Service not covered under division (B)(2)(f)(ii) of this 1392  
section and performed entirely without this state, with respect to 1393  
no part of which contributions are required and paid under an 1394  
unemployment compensation law of any other state, the Virgin 1395  
Islands, Canada, or of the United States, if the individual 1396  
performing such service is a resident of this state and the 1397  
director approves the election of the employer for whom such 1398  
services are performed; or, if the individual is not a resident of 1399  
this state but the place from which the service is directed or 1400  
controlled is in this state, the entire services of such 1401  
individual shall be deemed to be employment subject to this 1402  
chapter, provided service is deemed to be localized within this 1403  
state if the service is performed entirely within this state or if 1404

the service is performed both within and without this state but 1405  
the service performed without this state is incidental to the 1406  
individual's service within the state, for example, is temporary 1407  
or transitory in nature or consists of isolated transactions; 1408

(h) Service of an individual who is a citizen of the United 1409  
States, performed outside the United States except in Canada after 1410  
December 31, 1971, or the Virgin Islands, after December 31, 1971, 1411  
and before the first day of January of the year following that in 1412  
which the United States secretary of labor approves the Virgin 1413  
Islands law for the first time, in the employ of an American 1414  
employer, other than service which is "employment" under divisions 1415  
(B)(2)(f) and (g) of this section or similar provisions of another 1416  
state's law, if: 1417

(i) The employer's principal place of business in the United 1418  
States is located in this state; 1419

(ii) The employer has no place of business in the United 1420  
States, but the employer is an individual who is a resident of 1421  
this state; or the employer is a corporation which is organized 1422  
under the laws of this state, or the employer is a partnership or 1423  
a trust and the number of partners or trustees who are residents 1424  
of this state is greater than the number who are residents of any 1425  
other state; or 1426

(iii) None of the criteria of divisions (B)(2)(f)(i) and (ii) 1427  
of this section is met but the employer has elected coverage in 1428  
this state or the employer having failed to elect coverage in any 1429  
state, the individual has filed a claim for benefits, based on 1430  
such service, under this chapter. 1431

(i) For the purposes of division (B)(2)(h) of this section, 1432  
the term "American employer" means an employer who is an 1433  
individual who is a resident of the United States; or a 1434  
partnership, if two-thirds or more of the partners are residents 1435

of the United States; or a trust, if all of the trustees are 1436  
residents of the United States; or a corporation organized under 1437  
the laws of the United States or of any state, provided the term 1438  
"United States" includes the states, the District of Columbia, the 1439  
Commonwealth of Puerto Rico, and the Virgin Islands. 1440

(j) Notwithstanding any other provisions of divisions (B)(1) 1441  
and (2) of this section, service, except for domestic service in a 1442  
private home not covered under division (A)(1)(c) of this section, 1443  
with respect to which a tax is required to be paid under any 1444  
federal law imposing a tax against which credit may be taken for 1445  
contributions required to be paid into a state unemployment fund, 1446  
or service, except for domestic service in a private home not 1447  
covered under division (A)(1)(c) of this section, which, as a 1448  
condition for full tax credit against the tax imposed by the 1449  
"Federal Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 1450  
3311, is required to be covered under this chapter. 1451

(k) Construction services performed by any individual under a 1452  
construction contract, as defined in section 4141.39 of the 1453  
Revised Code, ~~if the director determines that the employer for~~ 1454  
~~whom services are performed has the right to direct or control the~~ 1455  
~~performance of the services and that the individuals who perform~~ 1456  
~~the services receive remuneration for the services performed. The~~ 1457  
~~director shall presume that the employer for whom services are~~ 1458  
~~performed has the right to direct or control the performance of~~ 1459  
~~the services if ten or more of the following criteria apply:~~ 1460

~~(i) The employer directs or controls the manner or method by~~ 1461  
~~which instructions are given to the individual performing~~ 1462  
~~services;~~ 1463

~~(ii) The employer requires particular training for the~~ 1464  
~~individual performing services;~~ 1465

~~(iii) Services performed by the individual are integrated~~ 1466

<del>into the regular functioning of the employer;</del>	1467
<del>(iv) The employer requires that services be provided by a particular individual;</del>	1468
<del>(v) The employer hires, supervises, or pays the wages of the individual performing services;</del>	1470
<del>(vi) A continuing relationship between the employer and the individual performing services exists which contemplates continuing or recurring work, even if not full time work;</del>	1471
<del>(vii) The employer requires the individual to perform services during established hours;</del>	1472
<del>(viii) The employer requires that the individual performing services be devoted on a full time basis to the business of the employer;</del>	1473
<del>(ix) The employer requires the individual to perform services on the employer's premises;</del>	1474
<del>(x) The employer requires the individual performing services to follow the order of work established by the employer;</del>	1475
<del>(xi) The employer requires the individual performing services to make oral or written reports of progress;</del>	1476
<del>(xii) The employer makes payment to the individual for services on a regular basis, such as hourly, weekly, or monthly;</del>	1477
<del>(xiii) The employer pays expenses for the individual performing services;</del>	1478
<del>(xiv) The employer furnishes the tools and materials for use by the individual to perform services;</del>	1479
<del>(xv) The individual performing services has not invested in the facilities used to perform services;</del>	1480
<del>(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the</del>	1481

services;	1496
<del>(xvii) The individual performing services is not performing services for more than two employers simultaneously;</del>	1497 1498
<del>(xviii) The individual performing services does not make the services available to the general public;</del>	1499 1500
<del>(xix) The employer has a right to discharge the individual performing services;</del>	1501 1502
<del>(xx) The individual performing services has the right to end the individual's relationship with the employer without incurring liability pursuant to an employment contract or agreement.;</del>	1503 1504 1505
(l) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded under division (B)(3) of this section.	1506 1507 1508 1509 1510 1511 1512 1513 1514
(m) Service performed by an individual for or on behalf of a motor carrier transporting property as an operator of a vehicle or vessel, unless all of the following factors apply to the individual and the motor carrier has not elected to consider the individual's service as employment:	1515 1516 1517 1518 1519
(i) The individual owns the vehicle or vessel that is used in performing the services for or on behalf of the carrier, or the individual leases the vehicle or vessel under a bona fide lease agreement that is not a temporary replacement lease agreement. For purposes of this division, a bona fide lease agreement does not include an agreement between the individual and the motor carrier transporting property for which, or on whose behalf, the	1520 1521 1522 1523 1524 1525 1526

individual provides services.	1527
(ii) The individual is responsible for supplying the necessary personal services to operate the vehicle or vessel used to provide the service.	1528 1529 1530
(iii) The compensation paid to the individual is based on factors related to work performed, including on a mileage-based rate or a percentage of any schedule of rates, and not solely on the basis of the hours or time expended.	1531 1532 1533 1534
(iv) The individual substantially controls the means and manner of performing the services, in conformance with regulatory requirements and specifications of the shipper.	1535 1536 1537
(v) The individual enters into a written contract with the carrier for whom the individual is performing the services that describes the relationship between the individual and the carrier to be that of an independent contractor and not that of an employee.	1538 1539 1540 1541 1542
(vi) The individual is responsible for substantially all of the principal operating costs of the vehicle or vessel and equipment used to provide the services, including maintenance, fuel, repairs, supplies, vehicle or vessel insurance, and personal expenses, except that the individual may be paid by the carrier the carrier's fuel surcharge and incidental costs, including tolls, permits, and lumper fees.	1543 1544 1545 1546 1547 1548 1549
(vii) The individual is responsible for any economic loss or economic gain from the arrangement with the carrier.	1550 1551
(viii) The individual is not performing services described in 26 U.S.C. 3306(c)(7) or (8).	1552 1553
(3) "Employment" does not include the following services if they are found not subject to the "Federal Unemployment Tax Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the services	1554 1555 1556

are not required to be included under division (B)(2)(j) of this section: 1557  
1558

(a) Service performed after December 31, 1977, in agricultural labor, except as provided in division (A)(1)(d) of this section; 1559  
1560  
1561

(b) Domestic service performed after December 31, 1977, in a private home, local college club, or local chapter of a college fraternity or sorority except as provided in division (A)(1)(c) of this section; 1562  
1563  
1564  
1565

(c) Service performed after December 31, 1977, for this state or a political subdivision as described in division (B)(2)(a) of this section when performed: 1566  
1567  
1568

(i) As a publicly elected official; 1569

(ii) As a member of a legislative body, or a member of the judiciary; 1570  
1571

(iii) As a military member of the Ohio national guard; 1572

(iv) As an employee, not in the classified service as defined in section 124.11 of the Revised Code, serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; 1573  
1574  
1575  
1576

(v) In a position which, under or pursuant to law, is designated as a major nontenured policymaking or advisory position, not in the classified service of the state, or a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week. 1577  
1578  
1579  
1580  
1581

(d) In the employ of any governmental unit or instrumentality of the United States; 1582  
1583

(e) Service performed after December 31, 1971: 1584

(i) Service in the employ of an educational institution or institution of higher education, including those operated by the 1585  
1586

state or a political subdivision, if such service is performed by 1587  
a student who is enrolled and is regularly attending classes at 1588  
the educational institution or institution of higher education; or 1589

(ii) By an individual who is enrolled at a nonprofit or 1590  
public educational institution which normally maintains a regular 1591  
faculty and curriculum and normally has a regularly organized body 1592  
of students in attendance at the place where its educational 1593  
activities are carried on as a student in a full-time program, 1594  
taken for credit at the institution, which combines academic 1595  
instruction with work experience, if the service is an integral 1596  
part of the program, and the institution has so certified to the 1597  
employer, provided that this subdivision shall not apply to 1598  
service performed in a program established for or on behalf of an 1599  
employer or group of employers. 1600

(f) Service performed by an individual in the employ of the 1601  
individual's son, daughter, or spouse and service performed by a 1602  
child under the age of eighteen in the employ of the child's 1603  
father or mother; 1604

(g) Service performed for one or more principals by an 1605  
individual who is compensated on a commission basis, who in the 1606  
performance of the work is master of the individual's own time and 1607  
efforts, and whose remuneration is wholly dependent on the amount 1608  
of effort the individual chooses to expend, and which service is 1609  
not subject to the "Federal Unemployment Tax Act," 53 Stat. 183 1610  
(1939), 26 U.S.C.A. 3301 to 3311. Service performed after December 1611  
31, 1971: 1612

(i) By an individual for an employer as an insurance agent or 1613  
as an insurance solicitor, if all this service is performed for 1614  
remuneration solely by way of commission; 1615

(ii) As a home worker performing work, according to 1616  
specifications furnished by the employer for whom the services are 1617

performed, on materials or goods furnished by such employer which 1618  
are required to be returned to the employer or to a person 1619  
designated for that purpose. 1620

(h) Service performed after December 31, 1971: 1621

(i) In the employ of a church or convention or association of 1622  
churches, or in an organization which is operated primarily for 1623  
religious purposes and which is operated, supervised, controlled, 1624  
or principally supported by a church or convention or association 1625  
of churches; 1626

(ii) By a duly ordained, commissioned, or licensed minister 1627  
of a church in the exercise of the individual's ministry or by a 1628  
member of a religious order in the exercise of duties required by 1629  
such order; or 1630

(iii) In a facility conducted for the purpose of carrying out 1631  
a program of rehabilitation for individuals whose earning capacity 1632  
is impaired by age or physical or mental deficiency or injury, or 1633  
providing remunerative work for individuals who because of their 1634  
impaired physical or mental capacity cannot be readily absorbed in 1635  
the competitive labor market, by an individual receiving such 1636  
rehabilitation or remunerative work. 1637

(i) Service performed after June 30, 1939, with respect to 1638  
which unemployment compensation is payable under the "Railroad 1639  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 351; 1640

(j) Service performed by an individual in the employ of any 1641  
organization exempt from income tax under section 501 of the 1642  
"Internal Revenue Code of 1954," if the remuneration for such 1643  
service does not exceed fifty dollars in any calendar quarter, or 1644  
if such service is in connection with the collection of dues or 1645  
premiums for a fraternal beneficial society, order, or association 1646  
and is performed away from the home office or is ritualistic 1647  
service in connection with any such society, order, or 1648

association; 1649

(k) Casual labor not in the course of an employer's trade or 1650  
business; incidental service performed by an officer, appraiser, 1651  
or member of a finance committee of a bank, building and loan 1652  
association, savings and loan association, or savings association 1653  
when the remuneration for such incidental service exclusive of the 1654  
amount paid or allotted for directors' fees does not exceed sixty 1655  
dollars per calendar quarter is casual labor; 1656

(l) Service performed in the employ of a voluntary employees' 1657  
beneficial association providing for the payment of life, 1658  
sickness, accident, or other benefits to the members of such 1659  
association or their dependents or their designated beneficiaries, 1660  
if admission to a membership in such association is limited to 1661  
individuals who are officers or employees of a municipal or public 1662  
corporation, of a political subdivision of the state, or of the 1663  
United States and no part of the net earnings of such association 1664  
inures, other than through such payments, to the benefit of any 1665  
private shareholder or individual; 1666

(m) Service performed by an individual in the employ of a 1667  
foreign government, including service as a consular or other 1668  
officer or employee or of a nondiplomatic representative; 1669

(n) Service performed in the employ of an instrumentality 1670  
wholly owned by a foreign government if the service is of a 1671  
character similar to that performed in foreign countries by 1672  
employees of the United States or of an instrumentality thereof 1673  
and if the director finds that the secretary of state of the 1674  
United States has certified to the secretary of the treasury of 1675  
the United States that the foreign government, with respect to 1676  
whose instrumentality exemption is claimed, grants an equivalent 1677  
exemption with respect to similar service performed in the foreign 1678  
country by employees of the United States and of instrumentalities 1679  
thereof; 1680

(o) Service with respect to which unemployment compensation 1681  
is payable under an unemployment compensation system established 1682  
by an act of congress; 1683

(p) Service performed as a student nurse in the employ of a 1684  
hospital or a nurses' training school by an individual who is 1685  
enrolled and is regularly attending classes in a nurses' training 1686  
school chartered or approved pursuant to state law, and service 1687  
performed as an intern in the employ of a hospital by an 1688  
individual who has completed a four years' course in a medical 1689  
school chartered or approved pursuant to state law; 1690

(q) Service performed by an individual under the age of 1691  
eighteen in the delivery or distribution of newspapers or shopping 1692  
news, not including delivery or distribution to any point for 1693  
subsequent delivery or distribution; 1694

(r) Service performed in the employ of the United States or 1695  
an instrumentality of the United States immune under the 1696  
Constitution of the United States from the contributions imposed 1697  
by this chapter, except that to the extent that congress permits 1698  
states to require any instrumentalities of the United States to 1699  
make payments into an unemployment fund under a state unemployment 1700  
compensation act, this chapter shall be applicable to such 1701  
instrumentalities and to services performed for such 1702  
instrumentalities in the same manner, to the same extent, and on 1703  
the same terms as to all other employers, individuals, and 1704  
services, provided that if this state is not certified for any 1705  
year by the proper agency of the United States under section 3304 1706  
of the "Internal Revenue Code of 1954," the payments required of 1707  
such instrumentalities with respect to such year shall be refunded 1708  
by the director from the fund in the same manner and within the 1709  
same period as is provided in division (E) of section 4141.09 of 1710  
the Revised Code with respect to contributions erroneously 1711  
collected; 1712

(s) Service performed by an individual as a member of a band 1713  
or orchestra, provided such service does not represent the 1714  
principal occupation of such individual, and which service is not 1715  
subject to or required to be covered for full tax credit against 1716  
the tax imposed by the "Federal Unemployment Tax Act," 53 Stat. 1717  
183 (1939), 26 U.S.C.A. 3301 to 3311. 1718

(t) Service performed in the employ of a day camp whose 1719  
camping season does not exceed twelve weeks in any calendar year, 1720  
and which service is not subject to the "Federal Unemployment Tax 1721  
Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service 1722  
performed after December 31, 1971: 1723

(i) In the employ of a hospital, if the service is performed 1724  
by a patient of the hospital, as defined in division (W) of this 1725  
section; 1726

(ii) For a prison or other correctional institution by an 1727  
inmate of the prison or correctional institution; 1728

(iii) Service performed after December 31, 1977, by an inmate 1729  
of a custodial institution operated by the state, a political 1730  
subdivision, or a nonprofit organization. 1731

(u) Service that is performed by a nonresident alien 1732  
individual for the period the individual temporarily is present in 1733  
the United States as a nonimmigrant under division (F), (J), (M), 1734  
or (Q) of section 101(a)(15) of the "Immigration and Nationality 1735  
Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended, that is excluded 1736  
under section 3306(c)(19) of the "Federal Unemployment Tax Act," 1737  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 1738

(v) Notwithstanding any other provisions of division (B)(3) 1739  
of this section, services that are excluded under divisions 1740  
(B)(3)(g), (j), (k), and (l) of this section shall not be excluded 1741  
from employment when performed for a nonprofit organization, as 1742  
defined in division (X) of this section, or for this state or its 1743

instrumentalities, or for a political subdivision or its	1744
instrumentalities or for Indian tribes;	1745
(w) Service that is performed by an individual working as an	1746
election official or election worker if the amount of remuneration	1747
received by the individual during the calendar year for services	1748
as an election official or election worker is less than one	1749
thousand dollars;	1750
(x) Service performed for an elementary or secondary school	1751
that is operated primarily for religious purposes, that is	1752
described in subsection 501(c)(3) and exempt from federal income	1753
taxation under subsection 501(a) of the Internal Revenue Code, 26	1754
U.S.C.A. 501;	1755
(y) Service performed by a person committed to a penal	1756
institution.	1757
(z) Service performed for an Indian tribe as described in	1758
division (B)(2)(1) of this section when performed in any of the	1759
following manners:	1760
(i) As a publicly elected official;	1761
(ii) As a member of an Indian tribal council;	1762
(iii) As a member of a legislative or judiciary body;	1763
(iv) In a position which, pursuant to Indian tribal law, is	1764
designated as a major nontenured policymaking or advisory	1765
position, or a policymaking or advisory position where the	1766
performance of the duties ordinarily does not require more than	1767
eight hours of time per week;	1768
(v) As an employee serving on a temporary basis in the case	1769
of a fire, storm, snow, earthquake, flood, or similar emergency.	1770
(aa) Service performed after December 31, 1971, for a	1771
nonprofit organization, this state or its instrumentalities, a	1772
political subdivision or its instrumentalities, or an Indian tribe	1773

as part of an unemployment work-relief or work-training program 1774  
assisted or financed in whole or in part by any federal agency or 1775  
an agency of a state or political subdivision, thereof, by an 1776  
individual receiving the work-relief or work-training. 1777

(bb) Participation in a learn to earn program as defined in 1778  
section 4141.293 of the Revised Code. 1779

(4) If the services performed during one half or more of any 1780  
pay period by an employee for the person employing that employee 1781  
constitute employment, all the services of such employee for such 1782  
period shall be deemed to be employment; but if the services 1783  
performed during more than one half of any such pay period by an 1784  
employee for the person employing that employee do not constitute 1785  
employment, then none of the services of such employee for such 1786  
period shall be deemed to be employment. As used in division 1787  
(B)(4) of this section, "pay period" means a period, of not more 1788  
than thirty-one consecutive days, for which payment of 1789  
remuneration is ordinarily made to the employee by the person 1790  
employing that employee. Division (B)(4) of this section does not 1791  
apply to services performed in a pay period by an employee for the 1792  
person employing that employee, if any of such service is excepted 1793  
by division (B)(3)(o) of this section. 1794

(C) "Benefits" means money payments payable to an individual 1795  
who has established benefit rights, as provided in this chapter, 1796  
for loss of remuneration due to the individual's unemployment. 1797

(D) "Benefit rights" means the weekly benefit amount and the 1798  
maximum benefit amount that may become payable to an individual 1799  
within the individual's benefit year as determined by the 1800  
director. 1801

(E) "Claim for benefits" means a claim for waiting period or 1802  
benefits for a designated week. 1803

(F) "Additional claim" means the first claim for benefits 1804

filed following any separation from employment during a benefit 1805  
year; "continued claim" means any claim other than the first claim 1806  
for benefits and other than an additional claim. 1807

(G) "Wages" means remuneration paid to an employee by each of 1808  
the employee's employers with respect to employment; except that 1809  
wages shall not include that part of remuneration paid during any 1810  
calendar year to an individual by an employer or such employer's 1811  
predecessor in interest in the same business or enterprise, which 1812  
in any calendar year is in excess of nine thousand dollars on and 1813  
after January 1, 1995; nine thousand five hundred dollars on and 1814  
after January 1, 2018; and nine thousand dollars on and after 1815  
January 1, 2020. Remuneration in excess of such amounts shall be 1816  
deemed wages subject to contribution to the same extent that such 1817  
remuneration is defined as wages under the "Federal Unemployment 1818  
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1819  
amended. The remuneration paid an employee by an employer with 1820  
respect to employment in another state, upon which contributions 1821  
were required and paid by such employer under the unemployment 1822  
compensation act of such other state, shall be included as a part 1823  
of remuneration in computing the amount specified in this 1824  
division. 1825

(H)(1) "Remuneration" means all compensation for personal 1826  
services, including commissions and bonuses and the cash value of 1827  
all compensation in any medium other than cash, except that in the 1828  
case of agricultural or domestic service, "remuneration" includes 1829  
only cash remuneration. Gratuities customarily received by an 1830  
individual in the course of the individual's employment from 1831  
persons other than the individual's employer and which are 1832  
accounted for by such individual to the individual's employer are 1833  
taxable wages. 1834

The reasonable cash value of compensation paid in any medium 1835  
other than cash shall be estimated and determined in accordance 1836

with rules prescribed by the director, provided that 1837  
"remuneration" does not include: 1838

(a) Payments as provided in divisions (b)(2) to (b)(20) of 1839  
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 713, 1840  
26 U.S.C.A. 3301 to 3311, as amended; 1841

(b) The payment by an employer, without deduction from the 1842  
remuneration of the individual in the employer's employ, of the 1843  
tax imposed upon an individual in the employer's employ under 1844  
section 3101 of the "Internal Revenue Code of 1954," with respect 1845  
to services performed after October 1, 1941. 1846

(2) "Cash remuneration" means all remuneration paid in cash, 1847  
including commissions and bonuses, but not including the cash 1848  
value of all compensation in any medium other than cash. 1849

(I) "Interested party" means the director and any party to 1850  
whom notice of a determination of an application for benefit 1851  
rights or a claim for benefits is required to be given under 1852  
section 4141.28 of the Revised Code. 1853

(J) "Annual payroll" means the total amount of wages subject 1854  
to contributions during a twelve-month period ending with the last 1855  
day of the second calendar quarter of any calendar year. 1856

(K) "Average annual payroll" means the average of the last 1857  
three annual payrolls of an employer, provided that if, as of any 1858  
computation date, the employer has had less than three annual 1859  
payrolls in such three-year period, such average shall be based on 1860  
the annual payrolls which the employer has had as of such date. 1861

(L)(1) "Contributions" means the money payments to the state 1862  
unemployment compensation fund required of employers by section 1863  
4141.25 of the Revised Code and of the state and any of its 1864  
political subdivisions electing to pay contributions under section 1865  
4141.242 of the Revised Code. Employers paying contributions shall 1866  
be described as "contributory employers." 1867

(2) "Payments in lieu of contributions" means the money 1868  
payments to the state unemployment compensation fund required of 1869  
reimbursing employers under sections 4141.241 and 4141.242 of the 1870  
Revised Code. 1871

(M) An individual is "totally unemployed" in any week during 1872  
which the individual performs no services and with respect to such 1873  
week no remuneration is payable to the individual. 1874

(N) An individual is "partially unemployed" in any week if, 1875  
due to involuntary loss of work, the total remuneration payable to 1876  
the individual for such week is less than the individual's weekly 1877  
benefit amount. 1878

(O) "Week" means the calendar week ending at midnight 1879  
Saturday unless an equivalent week of seven consecutive calendar 1880  
days is prescribed by the director. 1881

(1) "Qualifying week" means any calendar week in an 1882  
individual's base period with respect to which the individual 1883  
earns or is paid remuneration in employment subject to this 1884  
chapter. A calendar week with respect to which an individual earns 1885  
remuneration but for which payment was not made within the base 1886  
period, when necessary to qualify for benefit rights, may be 1887  
considered to be a qualifying week. The number of qualifying weeks 1888  
which may be established in a calendar quarter shall not exceed 1889  
the number of calendar weeks in the quarter. 1890

(2) "Average weekly wage" means the amount obtained by 1891  
dividing an individual's total remuneration for all qualifying 1892  
weeks during the base period by the number of such qualifying 1893  
weeks, provided that if the computation results in an amount that 1894  
is not a multiple of one dollar, such amount shall be rounded to 1895  
the next lower multiple of one dollar. 1896

(P) "Weekly benefit amount" means the amount of benefits an 1897  
individual would be entitled to receive for one week of total 1898

unemployment. 1899

(Q)(1) "Base period" means the first four of the last five 1900  
completed calendar quarters immediately preceding the first day of 1901  
an individual's benefit year, except as provided in division 1902  
(Q)(2) of this section. 1903

(2) If an individual does not have sufficient qualifying 1904  
weeks and wages in the base period to qualify for benefit rights, 1905  
the individual's base period shall be the four most recently 1906  
completed calendar quarters preceding the first day of the 1907  
individual's benefit year. Such base period shall be known as the 1908  
"alternate base period." If information as to weeks and wages for 1909  
the most recent quarter of the alternate base period is not 1910  
available to the director from the regular quarterly reports of 1911  
wage information, which are systematically accessible, the 1912  
director may, consistent with the provisions of section 4141.28 of 1913  
the Revised Code, base the determination of eligibility for 1914  
benefits on the affidavit of the claimant with respect to weeks 1915  
and wages for that calendar quarter. The claimant shall furnish 1916  
payroll documentation, where available, in support of the 1917  
affidavit. The determination based upon the alternate base period 1918  
as it relates to the claimant's benefit rights, shall be amended 1919  
when the quarterly report of wage information from the employer is 1920  
timely received and that information causes a change in the 1921  
determination. As provided in division (B) of section 4141.28 of 1922  
the Revised Code, any benefits paid and charged to an employer's 1923  
account, based upon a claimant's affidavit, shall be adjusted 1924  
effective as of the beginning of the claimant's benefit year. No 1925  
calendar quarter in a base period or alternate base period shall 1926  
be used to establish a subsequent benefit year. 1927

(3) The "base period" of a combined wage claim, as described 1928  
in division (H) of section 4141.43 of the Revised Code, shall be 1929  
the base period prescribed by the law of the state in which the 1930

claim is allowed. 1931

(4) For purposes of determining the weeks that comprise a 1932  
completed calendar quarter under this division, only those weeks 1933  
ending at midnight Saturday within the calendar quarter shall be 1934  
utilized. 1935

(R)(1) "Benefit year" with respect to an individual means the 1936  
fifty-two week period beginning with the first day of that week 1937  
with respect to which the individual first files a valid 1938  
application for determination of benefit rights, and thereafter 1939  
the fifty-two week period beginning with the first day of that 1940  
week with respect to which the individual next files a valid 1941  
application for determination of benefit rights after the 1942  
termination of the individual's last preceding benefit year, 1943  
except that the application shall not be considered valid unless 1944  
the individual has had employment in six weeks that is subject to 1945  
this chapter or the unemployment compensation act of another 1946  
state, or the United States, and has, since the beginning of the 1947  
individual's previous benefit year, in the employment earned three 1948  
times the average weekly wage determined for the previous benefit 1949  
year. The "benefit year" of a combined wage claim, as described in 1950  
division (H) of section 4141.43 of the Revised Code, shall be the 1951  
benefit year prescribed by the law of the state in which the claim 1952  
is allowed. Any application for determination of benefit rights 1953  
made in accordance with section 4141.28 of the Revised Code is 1954  
valid if the individual filing such application is unemployed, has 1955  
been employed by an employer or employers subject to this chapter 1956  
in at least twenty qualifying weeks within the individual's base 1957  
period, and has earned or been paid remuneration at an average 1958  
weekly wage of not less than twenty-seven and one-half per cent of 1959  
the statewide average weekly wage for such weeks. For purposes of 1960  
determining whether an individual has had sufficient employment 1961  
since the beginning of the individual's previous benefit year to 1962

file a valid application, "employment" means the performance of 1963  
services for which remuneration is payable. 1964

(2) Effective for benefit years beginning on and after 1965  
December 26, 2004, any application for determination of benefit 1966  
rights made in accordance with section 4141.28 of the Revised Code 1967  
is valid if the individual satisfies the criteria described in 1968  
division (R)(1) of this section, and if the reason for the 1969  
individual's separation from employment is not disqualifying 1970  
pursuant to division (D)(2) of section 4141.29 or section 4141.291 1971  
of the Revised Code. A disqualification imposed pursuant to 1972  
division (D)(2) of section 4141.29 or section 4141.291 of the 1973  
Revised Code must be removed as provided in those sections as a 1974  
requirement of establishing a valid application for benefit years 1975  
beginning on and after December 26, 2004. 1976

(3) The statewide average weekly wage shall be calculated by 1977  
the director once a year based on the twelve-month period ending 1978  
the thirtieth day of June, as set forth in division (B)(3) of 1979  
section 4141.30 of the Revised Code, rounded down to the nearest 1980  
dollar. Increases or decreases in the amount of remuneration 1981  
required to have been earned or paid in order for individuals to 1982  
have filed valid applications shall become effective on Sunday of 1983  
the calendar week in which the first day of January occurs that 1984  
follows the twelve-month period ending the thirtieth day of June 1985  
upon which the calculation of the statewide average weekly wage 1986  
was based. 1987

(4) As used in this division, an individual is "unemployed" 1988  
if, with respect to the calendar week in which such application is 1989  
filed, the individual is "partially unemployed" or "totally 1990  
unemployed" as defined in this section or if, prior to filing the 1991  
application, the individual was separated from the individual's 1992  
most recent work for any reason which terminated the individual's 1993  
employee-employer relationship, or was laid off indefinitely or 1994

for a definite period of seven or more days. 1995

(S) "Calendar quarter" means the period of three consecutive 1996  
calendar months ending on the thirty-first day of March, the 1997  
thirtieth day of June, the thirtieth day of September, and the 1998  
thirty-first day of December, or the equivalent thereof as the 1999  
director prescribes by rule. 2000

(T) "Computation date" means the first day of the third 2001  
calendar quarter of any calendar year. 2002

(U) "Contribution period" means the calendar year beginning 2003  
on the first day of January of any year. 2004

(V) "Agricultural labor," for the purpose of this division, 2005  
means any service performed prior to January 1, 1972, which was 2006  
agricultural labor as defined in this division prior to that date, 2007  
and service performed after December 31, 1971: 2008

(1) On a farm, in the employ of any person, in connection 2009  
with cultivating the soil, or in connection with raising or 2010  
harvesting any agricultural or horticultural commodity, including 2011  
the raising, shearing, feeding, caring for, training, and 2012  
management of livestock, bees, poultry, and fur-bearing animals 2013  
and wildlife; 2014

(2) In the employ of the owner or tenant or other operator of 2015  
a farm in connection with the operation, management, conservation, 2016  
improvement, or maintenance of such farm and its tools and 2017  
equipment, or in salvaging timber or clearing land of brush and 2018  
other debris left by hurricane, if the major part of such service 2019  
is performed on a farm; 2020

(3) In connection with the production or harvesting of any 2021  
commodity defined as an agricultural commodity in section 15 (g) 2022  
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 2023  
U.S.C. 1141j, as amended, or in connection with the ginning of 2024  
cotton, or in connection with the operation or maintenance of 2025

ditches, canals, reservoirs, or waterways, not owned or operated 2026  
for profit, used exclusively for supplying and storing water for 2027  
farming purposes; 2028

(4) In the employ of the operator of a farm in handling, 2029  
planting, drying, packing, packaging, processing, freezing, 2030  
grading, storing, or delivering to storage or to market or to a 2031  
carrier for transportation to market, in its unmanufactured state, 2032  
any agricultural or horticultural commodity, but only if the 2033  
operator produced more than one half of the commodity with respect 2034  
to which such service is performed; 2035

(5) In the employ of a group of operators of farms, or a 2036  
cooperative organization of which the operators are members, in 2037  
the performance of service described in division (V)(4) of this 2038  
section, but only if the operators produced more than one-half of 2039  
the commodity with respect to which the service is performed; 2040

(6) Divisions (V)(4) and (5) of this section shall not be 2041  
deemed to be applicable with respect to service performed: 2042

(a) In connection with commercial canning or commercial 2043  
freezing or in connection with any agricultural or horticultural 2044  
commodity after its delivery to a terminal market for distribution 2045  
for consumption; or 2046

(b) On a farm operated for profit if the service is not in 2047  
the course of the employer's trade or business. 2048

As used in division (V) of this section, "farm" includes 2049  
stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, 2050  
plantations, ranches, nurseries, ranges, greenhouses, or other 2051  
similar structures used primarily for the raising of agricultural 2052  
or horticultural commodities and orchards. 2053

(W) "Hospital" means an institution which has been registered 2054  
or licensed by the Ohio department of health as a hospital. 2055

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

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

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

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

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

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

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

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

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

or farm operator, and: 2086

(a) Pays, either on the individual's own behalf or on behalf 2087  
of the other employer or farm operator, the individuals so 2088  
furnished by the individual for the service in agricultural labor 2089  
performed by them; 2090

(b) Has not entered into a written agreement with the other 2091  
employer or farm operator under which the agricultural worker is 2092  
designated as in the employ of the other employer or farm 2093  
operator. 2094

(2) For the purposes of this chapter, any individual who is a 2095  
member of a crew furnished by a crew leader to perform service in 2096  
agricultural labor for any other employer or farm operator shall 2097  
be treated as an employee of the crew leader if: 2098

(a) The crew leader holds a valid certificate of registration 2099  
under the "Farm Labor Contractor Registration Act of 1963," 90 2100  
Stat. 2668, 7 U.S.C. 2041; or 2101

(b) Substantially all the members of the crew operate or 2102  
maintain tractors, mechanized harvesting or crop-dusting 2103  
equipment, or any other mechanized equipment, which is provided by 2104  
the crew leader; and 2105

(c) If the individual is not in the employment of the other 2106  
employer or farm operator within the meaning of division (B)(1) of 2107  
this section. 2108

(3) For the purposes of this division, any individual who is 2109  
furnished by a crew leader to perform service in agricultural 2110  
labor for any other employer or farm operator and who is not 2111  
treated as in the employment of the crew leader under division 2112  
(BB)(2) of this section shall be treated as the employee of the 2113  
other employer or farm operator and not of the crew leader. The 2114  
other employer or farm operator shall be treated as having paid 2115  
cash remuneration to the individual in an amount equal to the 2116

amount of cash remuneration paid to the individual by the crew leader, either on the crew leader's own behalf or on behalf of the other employer or farm operator, for the service in agricultural labor performed for the other employer or farm operator.

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

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

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

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

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

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

(FF) "Employee" means every person who is an employee under the rules adopted by the superintendent of industrial compliance pursuant to section 4177.01 of the Revised Code, unless the services performed by the individual do not constitute "employment" as defined in division (B) of this section.

Sec. 4177.01. The superintendent of industrial compliance 2148  
shall adopt rules to establish a test to determine whether an 2149  
individual is an employee or independent contractor for purposes 2150  
of Chapters 4121., 4123., 4127., 4131., 4141., and 5747. of the 2151  
Revised Code, consistent with the common law rules for determining 2152  
an employer-employee relationship used by the United States 2153  
internal revenue service pursuant to section 3121(d)(2) of the 2154  
"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2). 2155

Sec. 4177.02. No employer shall fail to consider an 2156  
individual who is an employee under the rules adopted by the 2157  
superintendent of industrial compliance pursuant to section 2158  
4177.01 of the Revised Code to be an employee for purposes of 2159  
Chapter 4121., 4123., 4127., 4131., 4141., or 5747. of the Revised 2160  
Code, unless the individual is otherwise not considered an 2161  
employee under the applicable law. 2162

Sec. 4177.03. The superintendent of industrial compliance 2163  
shall enforce this chapter. The superintendent shall adopt rules 2164  
in accordance with Chapter 119. of the Revised Code to implement 2165  
and administer this chapter. 2166

Sec. 4177.04. (A) An individual may file a complaint with the 2167  
superintendent of industrial compliance against an employer if the 2168  
individual reasonably believes that the employer is in violation 2169  
of section 4177.02 of the Revised Code. On receipt of a complaint, 2170  
the superintendent shall conduct an investigation into whether the 2171  
employer violated section 4177.02 of the Revised Code. 2172

(B) If, after an investigation pursuant to division (A) of 2173  
this section, the superintendent determines that reasonable 2174  
evidence exists that an employer has violated section 4177.02 of 2175  
the Revised Code, the superintendent shall send written notice to 2176

the employer and hold a hearing regarding the alleged violation in 2177  
accordance with Chapter 119. of the Revised Code. 2178

(C) If the superintendent determines, after the hearing, that 2179  
an employer has misclassified an employee as an independent 2180  
contractor, that determination is binding on the administrator of 2181  
workers' compensation, the director of job and family services, 2182  
and the tax commissioner unless the individual is otherwise not 2183  
considered an employee under the applicable law. Notwithstanding 2184  
any provision of this section to the contrary, nothing in this 2185  
chapter shall be construed to limit or otherwise constrain the 2186  
duties and powers of the administrator under Chapter 4121., 4123., 2187  
4127., or 4131. of the Revised Code, the director under Chapter 2188  
4141. of the Revised Code, or the tax commissioner under Chapter 2189  
5703. or 5747. of the Revised Code. 2190

(D) The superintendent's determination is an order that the 2191  
employer may appeal in accordance with section 119.12 of the 2192  
Revised Code. 2193

**Sec. 4177.05.** (A) If, after a hearing held in accordance with 2194  
section 4177.04 of the Revised Code, the superintendent of 2195  
industrial compliance determines that an employer violated section 2196  
4177.02 of the Revised Code, the superintendent shall do both of 2197  
the following: 2198

(1) Notify the administrator of workers' compensation, the 2199  
director of job and family services, and the tax commissioner, 2200  
each of whom shall determine whether the employer's violation of 2201  
section 4177.02 of the Revised Code results in the employer not 2202  
complying with the requirements of Chapter 4121., 4123., 4127., 2203  
4131., 4141., or 5747. of the Revised Code, as applicable; 2204

(2) For each day after a complaint was filed under division 2205  
(A) of section 4177.04 of the Revised Code, assess against the 2206  
employer a penalty of five hundred dollars for each employee the 2207

employer misclassified as an independent contractor in violation 2208  
of section 4177.02 of the Revised Code. 2209

(B) The superintendent shall not assess a penalty against an 2210  
employer under division (A)(2) of this section if the employer 2211  
voluntarily comes into compliance with section 4177.02 of the 2212  
Revised Code before the hearing is held pursuant to section 2213  
4177.04 of the Revised Code. 2214

(C) Regardless of the superintendent's determination, the 2215  
superintendent shall notify the child support enforcement agency 2216  
in the county in which the employee or independent contractor 2217  
resides of each individual who is receiving income. 2218

**Sec. 4177.06.** There is hereby created in the state treasury 2219  
the employee classification fund. The superintendent of industrial 2220  
compliance shall deposit all moneys the superintendent receives 2221  
under this chapter into the fund. The superintendent shall use the 2222  
fund for the administration, investigation, and other expenses 2223  
incurred in carrying out the superintendent's powers and duties 2224  
under this chapter. 2225

**Sec. 5747.01.** Except as otherwise expressly provided or 2226  
clearly appearing from the context, any term used in this chapter 2227  
that is not otherwise defined in this section has the same meaning 2228  
as when used in a comparable context in the laws of the United 2229  
States relating to federal income taxes or if not used in a 2230  
comparable context in those laws, has the same meaning as in 2231  
section 5733.40 of the Revised Code. Any reference in this chapter 2232  
to the Internal Revenue Code includes other laws of the United 2233  
States relating to federal income taxes. 2234

As used in this chapter: 2235

(A) "Adjusted gross income" or "Ohio adjusted gross income" 2236  
means federal adjusted gross income, as defined and used in the 2237

Internal Revenue Code, adjusted as provided in this section:	2238
(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.	2239 2240 2241
(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.	2242 2243 2244 2245 2246
(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.	2247 2248 2249 2250 2251 2252
(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.	2253 2254
(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.	2255 2256 2257 2258
(6) In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter.	2259 2260 2261 2262 2263 2264 2265 2266 2267
"Undistributed net income of a trust" means the taxable income of	2268

the trust increased by (a)(i) the additions to adjusted gross 2269  
income required under division (A) of this section and (ii) the 2270  
personal exemptions allowed to the trust pursuant to section 2271  
642(b) of the Internal Revenue Code, and decreased by (b)(i) the 2272  
deductions to adjusted gross income required under division (A) of 2273  
this section, (ii) the amount of federal income taxes attributable 2274  
to such income, and (iii) the amount of taxable income that has 2275  
been included in the adjusted gross income of a beneficiary by 2276  
reason of a prior accumulation distribution. Any undistributed net 2277  
income included in the adjusted gross income of a beneficiary 2278  
shall reduce the undistributed net income of the trust commencing 2279  
with the earliest years of the accumulation period. 2280

(7) Deduct the amount of wages and salaries, if any, not 2281  
otherwise allowable as a deduction but that would have been 2282  
allowable as a deduction in computing federal adjusted gross 2283  
income for the taxable year, had the targeted jobs credit allowed 2284  
and determined under sections 38, 51, and 52 of the Internal 2285  
Revenue Code not been in effect. 2286

(8) Deduct any interest or interest equivalent on public 2287  
obligations and purchase obligations to the extent that the 2288  
interest or interest equivalent is included in federal adjusted 2289  
gross income. 2290

(9) Add any loss or deduct any gain resulting from the sale, 2291  
exchange, or other disposition of public obligations to the extent 2292  
that the loss has been deducted or the gain has been included in 2293  
computing federal adjusted gross income. 2294

(10) Deduct or add amounts, as provided under section 5747.70 2295  
of the Revised Code, related to contributions to variable college 2296  
savings program accounts made or tuition units purchased pursuant 2297  
to Chapter 3334. of the Revised Code. 2298

(11)(a) Deduct, to the extent not otherwise allowable as a 2299

deduction or exclusion in computing federal or Ohio adjusted gross 2300  
income for the taxable year, the amount the taxpayer paid during 2301  
the taxable year for medical care insurance and qualified 2302  
long-term care insurance for the taxpayer, the taxpayer's spouse, 2303  
and dependents. No deduction for medical care insurance under 2304  
division (A)(11) of this section shall be allowed either to any 2305  
taxpayer who is eligible to participate in any subsidized health 2306  
plan maintained by any employer of the taxpayer or of the 2307  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 2308  
application would be entitled to, benefits under part A of Title 2309  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 2310  
301, as amended. For the purposes of division (A)(11)(a) of this 2311  
section, "subsidized health plan" means a health plan for which 2312  
the employer pays any portion of the plan's cost. The deduction 2313  
allowed under division (A)(11)(a) of this section shall be the net 2314  
of any related premium refunds, related premium reimbursements, or 2315  
related insurance premium dividends received during the taxable 2316  
year. 2317

(b) Deduct, to the extent not otherwise deducted or excluded 2318  
in computing federal or Ohio adjusted gross income during the 2319  
taxable year, the amount the taxpayer paid during the taxable 2320  
year, not compensated for by any insurance or otherwise, for 2321  
medical care of the taxpayer, the taxpayer's spouse, and 2322  
dependents, to the extent the expenses exceed seven and one-half 2323  
per cent of the taxpayer's federal adjusted gross income. 2324

(c) Deduct, to the extent not otherwise deducted or excluded 2325  
in computing federal or Ohio adjusted gross income, any amount 2326  
included in federal adjusted gross income under section 105 or not 2327  
excluded under section 106 of the Internal Revenue Code solely 2328  
because it relates to an accident and health plan for a person who 2329  
otherwise would be a "qualifying relative" and thus a "dependent" 2330  
under section 152 of the Internal Revenue Code but for the fact 2331

that the person fails to meet the income and support limitations 2332  
under section 152(d)(1)(B) and (C) of the Internal Revenue Code. 2333

(d) For purposes of division (A)(11) of this section, 2334  
"medical care" has the meaning given in section 213 of the 2335  
Internal Revenue Code, subject to the special rules, limitations, 2336  
and exclusions set forth therein, and "qualified long-term care" 2337  
has the same meaning given in section 7702B(c) of the Internal 2338  
Revenue Code. Solely for purposes of divisions (A)(11)(a) and (c) 2339  
of this section, "dependent" includes a person who otherwise would 2340  
be a "qualifying relative" and thus a "dependent" under section 2341  
152 of the Internal Revenue Code but for the fact that the person 2342  
fails to meet the income and support limitations under section 2343  
152(d)(1)(B) and (C) of the Internal Revenue Code. 2344

(12)(a) Deduct any amount included in federal adjusted gross 2345  
income solely because the amount represents a reimbursement or 2346  
refund of expenses that in any year the taxpayer had deducted as 2347  
an itemized deduction pursuant to section 63 of the Internal 2348  
Revenue Code and applicable United States department of the 2349  
treasury regulations. The deduction otherwise allowed under 2350  
division (A)(12)(a) of this section shall be reduced to the extent 2351  
the reimbursement is attributable to an amount the taxpayer 2352  
deducted under this section in any taxable year. 2353

(b) Add any amount not otherwise included in Ohio adjusted 2354  
gross income for any taxable year to the extent that the amount is 2355  
attributable to the recovery during the taxable year of any amount 2356  
deducted or excluded in computing federal or Ohio adjusted gross 2357  
income in any taxable year. 2358

(13) Deduct any portion of the deduction described in section 2359  
1341(a)(2) of the Internal Revenue Code, for repaying previously 2360  
reported income received under a claim of right, that meets both 2361  
of the following requirements: 2362

(a) It is allowable for repayment of an item that was 2363  
included in the taxpayer's adjusted gross income for a prior 2364  
taxable year and did not qualify for a credit under division (A) 2365  
or (B) of section 5747.05 of the Revised Code for that year; 2366

(b) It does not otherwise reduce the taxpayer's adjusted 2367  
gross income for the current or any other taxable year. 2368

(14) Deduct an amount equal to the deposits made to, and net 2369  
investment earnings of, a medical savings account during the 2370  
taxable year, in accordance with section 3924.66 of the Revised 2371  
Code. The deduction allowed by division (A)(14) of this section 2372  
does not apply to medical savings account deposits and earnings 2373  
otherwise deducted or excluded for the current or any other 2374  
taxable year from the taxpayer's federal adjusted gross income. 2375

(15)(a) Add an amount equal to the funds withdrawn from a 2376  
medical savings account during the taxable year, and the net 2377  
investment earnings on those funds, when the funds withdrawn were 2378  
used for any purpose other than to reimburse an account holder 2379  
for, or to pay, eligible medical expenses, in accordance with 2380  
section 3924.66 of the Revised Code; 2381

(b) Add the amounts distributed from a medical savings 2382  
account under division (A)(2) of section 3924.68 of the Revised 2383  
Code during the taxable year. 2384

(16) Add any amount claimed as a credit under section 2385  
5747.059 or 5747.65 of the Revised Code to the extent that such 2386  
amount satisfies either of the following: 2387

(a) The amount was deducted or excluded from the computation 2388  
of the taxpayer's federal adjusted gross income as required to be 2389  
reported for the taxpayer's taxable year under the Internal 2390  
Revenue Code; 2391

(b) The amount resulted in a reduction of the taxpayer's 2392  
federal adjusted gross income as required to be reported for any 2393

of the taxpayer's taxable years under the Internal Revenue Code. 2394

(17) Deduct the amount contributed by the taxpayer to an 2395  
individual development account program established by a county 2396  
department of job and family services pursuant to sections 329.11 2397  
to 329.14 of the Revised Code for the purpose of matching funds 2398  
deposited by program participants. On request of the tax 2399  
commissioner, the taxpayer shall provide any information that, in 2400  
the tax commissioner's opinion, is necessary to establish the 2401  
amount deducted under division (A)(17) of this section. 2402

(18) Beginning in taxable year 2001 but not for any taxable 2403  
year beginning after December 31, 2005, if the taxpayer is married 2404  
and files a joint return and the combined federal adjusted gross 2405  
income of the taxpayer and the taxpayer's spouse for the taxable 2406  
year does not exceed one hundred thousand dollars, or if the 2407  
taxpayer is single and has a federal adjusted gross income for the 2408  
taxable year not exceeding fifty thousand dollars, deduct amounts 2409  
paid during the taxable year for qualified tuition and fees paid 2410  
to an eligible institution for the taxpayer, the taxpayer's 2411  
spouse, or any dependent of the taxpayer, who is a resident of 2412  
this state and is enrolled in or attending a program that 2413  
culminates in a degree or diploma at an eligible institution. The 2414  
deduction may be claimed only to the extent that qualified tuition 2415  
and fees are not otherwise deducted or excluded for any taxable 2416  
year from federal or Ohio adjusted gross income. The deduction may 2417  
not be claimed for educational expenses for which the taxpayer 2418  
claims a credit under section 5747.27 of the Revised Code. 2419

(19) Add any reimbursement received during the taxable year 2420  
of any amount the taxpayer deducted under division (A)(18) of this 2421  
section in any previous taxable year to the extent the amount is 2422  
not otherwise included in Ohio adjusted gross income. 2423

(20)(a)(i) Subject to divisions (A)(20)(a)(iii), (iv), and 2424  
(v) of this section, add five-sixths of the amount of depreciation 2425

expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.

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

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

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

(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation

expense allowed by subsection (k) of section 168 of the Internal 2458  
Revenue Code and by qualifying section 179 depreciation expense, 2459  
"the entire" shall be substituted for "five-sixths of the" for the 2460  
purpose of divisions (A)(20)(a)(i) and (ii) of this section. 2461

The tax commissioner, under procedures established by the 2462  
commissioner, may waive the add-backs related to a pass-through 2463  
entity if the taxpayer owns, directly or indirectly, less than 2464  
five per cent of the pass-through entity. 2465

(b) Nothing in division (A)(20) of this section shall be 2466  
construed to adjust or modify the adjusted basis of any asset. 2467

(c) To the extent the add-back required under division 2468  
(A)(20)(a) of this section is attributable to property generating 2469  
nonbusiness income or loss allocated under section 5747.20 of the 2470  
Revised Code, the add-back shall be situated to the same location 2471  
as the nonbusiness income or loss generated by the property for 2472  
the purpose of determining the credit under division (A) of 2473  
section 5747.05 of the Revised Code. Otherwise, the add-back shall 2474  
be apportioned, subject to one or more of the four alternative 2475  
methods of apportionment enumerated in section 5747.21 of the 2476  
Revised Code. 2477

(d) For the purposes of division (A)(20)(a)(v) of this 2478  
section, net operating loss carryback and carryforward shall not 2479  
include the allowance of any net operating loss deduction 2480  
carryback or carryforward to the taxable year to the extent such 2481  
loss resulted from depreciation allowed by section 168(k) of the 2482  
Internal Revenue Code and by the qualifying section 179 2483  
depreciation expense amount. 2484

(e) For the purposes of divisions (A)(20) and (21) of this 2485  
section: 2486

(i) "Income taxes withheld" means the total amount withheld 2487  
and remitted under sections 5747.06 and 5747.07 of the Revised 2488

Code by an employer during the employer's taxable year. 2489

(ii) "Increase in income taxes withheld" means the amount by 2490  
which the amount of income taxes withheld by an employer during 2491  
the employer's current taxable year exceeds the amount of income 2492  
taxes withheld by that employer during the employer's immediately 2493  
preceding taxable year. 2494

(iii) "Qualifying section 179 depreciation expense" means the 2495  
difference between (I) the amount of depreciation expense directly 2496  
or indirectly allowed to a taxpayer under section 179 of the 2497  
Internal Revised Code, and (II) the amount of depreciation expense 2498  
directly or indirectly allowed to the taxpayer under section 179 2499  
of the Internal Revenue Code as that section existed on December 2500  
31, 2002. 2501

(21)(a) If the taxpayer was required to add an amount under 2502  
division (A)(20)(a) of this section for a taxable year, deduct one 2503  
of the following: 2504

(i) One-fifth of the amount so added for each of the five 2505  
succeeding taxable years if the amount so added was five-sixths of 2506  
qualifying section 179 depreciation expense or depreciation 2507  
expense allowed by subsection (k) of section 168 of the Internal 2508  
Revenue Code; 2509

(ii) One-half of the amount so added for each of the two 2510  
succeeding taxable years if the amount so added was two-thirds of 2511  
such depreciation expense; 2512

(iii) One-sixth of the amount so added for each of the six 2513  
succeeding taxable years if the entire amount of such depreciation 2514  
expense was so added. 2515

(b) If the amount deducted under division (A)(21)(a) of this 2516  
section is attributable to an add-back allocated under division 2517  
(A)(20)(c) of this section, the amount deducted shall be situated 2518  
to the same location. Otherwise, the add-back shall be apportioned 2519

using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

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

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

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

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

(24) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in

computing federal or Ohio adjusted gross income for the taxable 2551  
year, military pay and allowances received by the taxpayer during 2552  
the taxable year for active duty service in the United States 2553  
army, air force, navy, marine corps, or coast guard or reserve 2554  
components thereof or the national guard. The deduction may not be 2555  
claimed for military pay and allowances received by the taxpayer 2556  
while the taxpayer is stationed in this state. 2557

(25) Deduct, to the extent not otherwise allowable as a 2558  
deduction or exclusion in computing federal or Ohio adjusted gross 2559  
income for the taxable year and not otherwise compensated for by 2560  
any other source, the amount of qualified organ donation expenses 2561  
incurred by the taxpayer during the taxable year, not to exceed 2562  
ten thousand dollars. A taxpayer may deduct qualified organ 2563  
donation expenses only once for all taxable years beginning with 2564  
taxable years beginning in 2007. 2565

For the purposes of division (A)(25) of this section: 2566

(a) "Human organ" means all or any portion of a human liver, 2567  
pancreas, kidney, intestine, or lung, and any portion of human 2568  
bone marrow. 2569

(b) "Qualified organ donation expenses" means travel 2570  
expenses, lodging expenses, and wages and salary forgone by a 2571  
taxpayer in connection with the taxpayer's donation, while living, 2572  
of one or more of the taxpayer's human organs to another human 2573  
being. 2574

(26) Deduct, to the extent not otherwise deducted or excluded 2575  
in computing federal or Ohio adjusted gross income for the taxable 2576  
year, amounts received by the taxpayer as retired personnel pay 2577  
for service in the uniformed services or reserve components 2578  
thereof, or the national guard, or received by the surviving 2579  
spouse or former spouse of such a taxpayer under the survivor 2580  
benefit plan on account of such a taxpayer's death. If the 2581

taxpayer receives income on account of retirement paid under the 2582  
federal civil service retirement system or federal employees 2583  
retirement system, or under any successor retirement program 2584  
enacted by the congress of the United States that is established 2585  
and maintained for retired employees of the United States 2586  
government, and such retirement income is based, in whole or in 2587  
part, on credit for the taxpayer's uniformed service, the 2588  
deduction allowed under this division shall include only that 2589  
portion of such retirement income that is attributable to the 2590  
taxpayer's uniformed service, to the extent that portion of such 2591  
retirement income is otherwise included in federal adjusted gross 2592  
income and is not otherwise deducted under this section. Any 2593  
amount deducted under division (A)(26) of this section is not 2594  
included in a taxpayer's adjusted gross income for the purposes of 2595  
section 5747.055 of the Revised Code. No amount may be deducted 2596  
under division (A)(26) of this section on the basis of which a 2597  
credit was claimed under section 5747.055 of the Revised Code. 2598

(27) Deduct, to the extent not otherwise deducted or excluded 2599  
in computing federal or Ohio adjusted gross income for the taxable 2600  
year, the amount the taxpayer received during the taxable year 2601  
from the military injury relief fund created in section 5902.05 of 2602  
the Revised Code. 2603

(28) Deduct, to the extent not otherwise deducted or excluded 2604  
in computing federal or Ohio adjusted gross income for the taxable 2605  
year, the amount the taxpayer received as a veterans bonus during 2606  
the taxable year from the Ohio department of veterans services as 2607  
authorized by Section 2r of Article VIII, Ohio Constitution. 2608

(29) Deduct, to the extent not otherwise deducted or excluded 2609  
in computing federal or Ohio adjusted gross income for the taxable 2610  
year, any income derived from a transfer agreement or from the 2611  
enterprise transferred under that agreement under section 4313.02 2612  
of the Revised Code. 2613

(30) Deduct, to the extent not otherwise deducted or excluded 2614  
in computing federal or Ohio adjusted gross income for the taxable 2615  
year, Ohio college opportunity or federal Pell grant amounts 2616  
received by the taxpayer or the taxpayer's spouse or dependent 2617  
pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 2618  
1070a, et seq., and used to pay room or board furnished by the 2619  
educational institution for which the grant was awarded at the 2620  
institution's facilities, including meal plans administered by the 2621  
institution. For the purposes of this division, receipt of a grant 2622  
includes the distribution of a grant directly to an educational 2623  
institution and the crediting of the grant to the enrollee's 2624  
account with the institution. 2625

(31)(a) For taxable years beginning in 2015, deduct from the 2626  
portion of an individual's adjusted gross income that is business 2627  
income, to the extent not otherwise deducted or excluded in 2628  
computing federal or Ohio adjusted gross income for the taxable 2629  
year, the lesser of the following amounts: 2630

(i) Seventy-five per cent of the individual's business 2631  
income; 2632

(ii) Ninety-three thousand seven hundred fifty dollars for 2633  
each spouse if spouses file separate returns under section 5747.08 2634  
of the Revised Code or one hundred eighty-seven thousand five 2635  
hundred dollars for all other individuals. 2636

(b) For taxable years beginning in 2016 or thereafter, deduct 2637  
from the portion of an individual's adjusted gross income that is 2638  
business income, to the extent not otherwise deducted or excluded 2639  
in computing federal adjusted gross income for the taxable year, 2640  
one hundred twenty-five thousand dollars for each spouse if 2641  
spouses file separate returns under section 5747.08 of the Revised 2642  
Code or two hundred fifty thousand dollars for all other 2643  
individuals. 2644

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

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

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

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

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

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

(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income, gain, or loss from real property, tangible property, and intangible property if the acquisition, rental, management, and disposition of the

property constitute integral parts of the regular course of a 2676  
trade or business operation. "Business income" includes income, 2677  
including gain or loss, from a partial or complete liquidation of 2678  
a business, including, but not limited to, gain or loss from the 2679  
sale or other disposition of goodwill. 2680

(C) "Nonbusiness income" means all income other than business 2681  
income and may include, but is not limited to, compensation, rents 2682  
and royalties from real or tangible personal property, capital 2683  
gains, interest, dividends and distributions, patent or copyright 2684  
royalties, or lottery winnings, prizes, and awards. 2685

(D) "Compensation" means any form of remuneration paid to an 2686  
employee for personal services. 2687

(E) "Fiduciary" means a guardian, trustee, executor, 2688  
administrator, receiver, conservator, or any other person acting 2689  
in any fiduciary capacity for any individual, trust, or estate. 2690

(F) "Fiscal year" means an accounting period of twelve months 2691  
ending on the last day of any month other than December. 2692

(G) "Individual" means any natural person. 2693

(H) "Internal Revenue Code" means the "Internal Revenue Code 2694  
of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2695

(I) "Resident" means any of the following, provided that 2696  
division (I)(3) of this section applies only to taxable years of a 2697  
trust beginning in 2002 or thereafter: 2698

(1) An individual who is domiciled in this state, subject to 2699  
section 5747.24 of the Revised Code; 2700

(2) The estate of a decedent who at the time of death was 2701  
domiciled in this state. The domicile tests of section 5747.24 of 2702  
the Revised Code are not controlling for purposes of division 2703  
(I)(2) of this section. 2704

(3) A trust that, in whole or part, resides in this state. If 2705

only part of a trust resides in this state, the trust is a 2706  
resident only with respect to that part. 2707

For the purposes of division (I)(3) of this section: 2708

(a) A trust resides in this state for the trust's current 2709  
taxable year to the extent, as described in division (I)(3)(d) of 2710  
this section, that the trust consists directly or indirectly, in 2711  
whole or in part, of assets, net of any related liabilities, that 2712  
were transferred, or caused to be transferred, directly or 2713  
indirectly, to the trust by any of the following: 2714

(i) A person, a court, or a governmental entity or 2715  
instrumentality on account of the death of a decedent, but only if 2716  
the trust is described in division (I)(3)(e)(i) or (ii) of this 2717  
section; 2718

(ii) A person who was domiciled in this state for the 2719  
purposes of this chapter when the person directly or indirectly 2720  
transferred assets to an irrevocable trust, but only if at least 2721  
one of the trust's qualifying beneficiaries is domiciled in this 2722  
state for the purposes of this chapter during all or some portion 2723  
of the trust's current taxable year; 2724

(iii) A person who was domiciled in this state for the 2725  
purposes of this chapter when the trust document or instrument or 2726  
part of the trust document or instrument became irrevocable, but 2727  
only if at least one of the trust's qualifying beneficiaries is a 2728  
resident domiciled in this state for the purposes of this chapter 2729  
during all or some portion of the trust's current taxable year. If 2730  
a trust document or instrument became irrevocable upon the death 2731  
of a person who at the time of death was domiciled in this state 2732  
for purposes of this chapter, that person is a person described in 2733  
division (I)(3)(a)(iii) of this section. 2734

(b) A trust is irrevocable to the extent that the transferor 2735  
is not considered to be the owner of the net assets of the trust 2736

under sections 671 to 678 of the Internal Revenue Code. 2737

(c) With respect to a trust other than a charitable lead 2738  
trust, "qualifying beneficiary" has the same meaning as "potential 2739  
current beneficiary" as defined in section 1361(e)(2) of the 2740  
Internal Revenue Code, and with respect to a charitable lead trust 2741  
"qualifying beneficiary" is any current, future, or contingent 2742  
beneficiary, but with respect to any trust "qualifying 2743  
beneficiary" excludes a person or a governmental entity or 2744  
instrumentality to any of which a contribution would qualify for 2745  
the charitable deduction under section 170 of the Internal Revenue 2746  
Code. 2747

(d) For the purposes of division (I)(3)(a) of this section, 2748  
the extent to which a trust consists directly or indirectly, in 2749  
whole or in part, of assets, net of any related liabilities, that 2750  
were transferred directly or indirectly, in whole or part, to the 2751  
trust by any of the sources enumerated in that division shall be 2752  
ascertained by multiplying the fair market value of the trust's 2753  
assets, net of related liabilities, by the qualifying ratio, which 2754  
shall be computed as follows: 2755

(i) The first time the trust receives assets, the numerator 2756  
of the qualifying ratio is the fair market value of those assets 2757  
at that time, net of any related liabilities, from sources 2758  
enumerated in division (I)(3)(a) of this section. The denominator 2759  
of the qualifying ratio is the fair market value of all the 2760  
trust's assets at that time, net of any related liabilities. 2761

(ii) Each subsequent time the trust receives assets, a 2762  
revised qualifying ratio shall be computed. The numerator of the 2763  
revised qualifying ratio is the sum of (1) the fair market value 2764  
of the trust's assets immediately prior to the subsequent 2765  
transfer, net of any related liabilities, multiplied by the 2766  
qualifying ratio last computed without regard to the subsequent 2767  
transfer, and (2) the fair market value of the subsequently 2768

transferred assets at the time transferred, net of any related 2769  
liabilities, from sources enumerated in division (I)(3)(a) of this 2770  
section. The denominator of the revised qualifying ratio is the 2771  
fair market value of all the trust's assets immediately after the 2772  
subsequent transfer, net of any related liabilities. 2773

(iii) Whether a transfer to the trust is by or from any of 2774  
the sources enumerated in division (I)(3)(a) of this section shall 2775  
be ascertained without regard to the domicile of the trust's 2776  
beneficiaries. 2777

(e) For the purposes of division (I)(3)(a)(i) of this 2778  
section: 2779

(i) A trust is described in division (I)(3)(e)(i) of this 2780  
section if the trust is a testamentary trust and the testator of 2781  
that testamentary trust was domiciled in this state at the time of 2782  
the testator's death for purposes of the taxes levied under 2783  
Chapter 5731. of the Revised Code. 2784

(ii) A trust is described in division (I)(3)(e)(ii) of this 2785  
section if the transfer is a qualifying transfer described in any 2786  
of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an 2787  
irrevocable inter vivos trust, and at least one of the trust's 2788  
qualifying beneficiaries is domiciled in this state for purposes 2789  
of this chapter during all or some portion of the trust's current 2790  
taxable year. 2791

(f) For the purposes of division (I)(3)(e)(ii) of this 2792  
section, a "qualifying transfer" is a transfer of assets, net of 2793  
any related liabilities, directly or indirectly to a trust, if the 2794  
transfer is described in any of the following: 2795

(i) The transfer is made to a trust, created by the decedent 2796  
before the decedent's death and while the decedent was domiciled 2797  
in this state for the purposes of this chapter, and, prior to the 2798  
death of the decedent, the trust became irrevocable while the 2799

decedent was domiciled in this state for the purposes of this 2800  
chapter. 2801

(ii) The transfer is made to a trust to which the decedent, 2802  
prior to the decedent's death, had directly or indirectly 2803  
transferred assets, net of any related liabilities, while the 2804  
decedent was domiciled in this state for the purposes of this 2805  
chapter, and prior to the death of the decedent the trust became 2806  
irrevocable while the decedent was domiciled in this state for the 2807  
purposes of this chapter. 2808

(iii) The transfer is made on account of a contractual 2809  
relationship existing directly or indirectly between the 2810  
transferor and either the decedent or the estate of the decedent 2811  
at any time prior to the date of the decedent's death, and the 2812  
decedent was domiciled in this state at the time of death for 2813  
purposes of the taxes levied under Chapter 5731. of the Revised 2814  
Code. 2815

(iv) The transfer is made to a trust on account of a 2816  
contractual relationship existing directly or indirectly between 2817  
the transferor and another person who at the time of the 2818  
decedent's death was domiciled in this state for purposes of this 2819  
chapter. 2820

(v) The transfer is made to a trust on account of the will of 2821  
a testator who was domiciled in this state at the time of the 2822  
testator's death for purposes of the taxes levied under Chapter 2823  
5731. of the Revised Code. 2824

(vi) The transfer is made to a trust created by or caused to 2825  
be created by a court, and the trust was directly or indirectly 2826  
created in connection with or as a result of the death of an 2827  
individual who, for purposes of the taxes levied under Chapter 2828  
5731. of the Revised Code, was domiciled in this state at the time 2829  
of the individual's death. 2830

(g) The tax commissioner may adopt rules to ascertain the 2831  
part of a trust residing in this state. 2832

(J) "Nonresident" means an individual or estate that is not a 2833  
resident. An individual who is a resident for only part of a 2834  
taxable year is a nonresident for the remainder of that taxable 2835  
year. 2836

(K) "Pass-through entity" has the same meaning as in section 2837  
5733.04 of the Revised Code. 2838

(L) "Return" means the notifications and reports required to 2839  
be filed pursuant to this chapter for the purpose of reporting the 2840  
tax due and includes declarations of estimated tax when so 2841  
required. 2842

(M) "Taxable year" means the calendar year or the taxpayer's 2843  
fiscal year ending during the calendar year, or fractional part 2844  
thereof, upon which the adjusted gross income is calculated 2845  
pursuant to this chapter. 2846

(N) "Taxpayer" means any person subject to the tax imposed by 2847  
section 5747.02 of the Revised Code or any pass-through entity 2848  
that makes the election under division (D) of section 5747.08 of 2849  
the Revised Code. 2850

(O) "Dependents" means dependents as defined in the Internal 2851  
Revenue Code and as claimed in the taxpayer's federal income tax 2852  
return for the taxable year or which the taxpayer would have been 2853  
permitted to claim had the taxpayer filed a federal income tax 2854  
return. 2855

(P) "Principal county of employment" means, in the case of a 2856  
nonresident, the county within the state in which a taxpayer 2857  
performs services for an employer or, if those services are 2858  
performed in more than one county, the county in which the major 2859  
portion of the services are performed. 2860

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:	2861 2862
(1) "Subdivision" means any county, municipal corporation, park district, or township.	2863 2864
(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.	2865 2866 2867 2868
(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.	2869 2870
(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:	2871 2872 2873
(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:	2874 2875 2876 2877 2878 2879 2880 2881
(a) The net amount is not attributable to the S portion of an electing small business trust and has not been distributed to beneficiaries for the taxable year;	2882 2883 2884
(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.	2885 2886
(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to	2887 2888 2889 2890

the extent that the interest or dividends are exempt from federal 2891  
income taxes but not from state income taxes, but only to the 2892  
extent that such net amount is not otherwise includible in Ohio 2893  
taxable income and is described in either division (S)(1)(a) or 2894  
(b) of this section; 2895

(3) Add the amount of personal exemption allowed to the 2896  
estate pursuant to section 642(b) of the Internal Revenue Code; 2897

(4) Deduct interest or dividends, net of related expenses 2898  
deducted in computing federal taxable income, on obligations of 2899  
the United States and its territories and possessions or of any 2900  
authority, commission, or instrumentality of the United States to 2901  
the extent that the interest or dividends are exempt from state 2902  
taxes under the laws of the United States, but only to the extent 2903  
that such amount is included in federal taxable income and is 2904  
described in either division (S)(1)(a) or (b) of this section; 2905

(5) Deduct the amount of wages and salaries, if any, not 2906  
otherwise allowable as a deduction but that would have been 2907  
allowable as a deduction in computing federal taxable income for 2908  
the taxable year, had the targeted jobs credit allowed under 2909  
sections 38, 51, and 52 of the Internal Revenue Code not been in 2910  
effect, but only to the extent such amount relates either to 2911  
income included in federal taxable income for the taxable year or 2912  
to income of the S portion of an electing small business trust for 2913  
the taxable year; 2914

(6) Deduct any interest or interest equivalent, net of 2915  
related expenses deducted in computing federal taxable income, on 2916  
public obligations and purchase obligations, but only to the 2917  
extent that such net amount relates either to income included in 2918  
federal taxable income for the taxable year or to income of the S 2919  
portion of an electing small business trust for the taxable year; 2920

(7) Add any loss or deduct any gain resulting from sale, 2921

exchange, or other disposition of public obligations to the extent 2922  
that such loss has been deducted or such gain has been included in 2923  
computing either federal taxable income or income of the S portion 2924  
of an electing small business trust for the taxable year; 2925

(8) Except in the case of the final return of an estate, add 2926  
any amount deducted by the taxpayer on both its Ohio estate tax 2927  
return pursuant to section 5731.14 of the Revised Code, and on its 2928  
federal income tax return in determining federal taxable income; 2929

(9)(a) Deduct any amount included in federal taxable income 2930  
solely because the amount represents a reimbursement or refund of 2931  
expenses that in a previous year the decedent had deducted as an 2932  
itemized deduction pursuant to section 63 of the Internal Revenue 2933  
Code and applicable treasury regulations. The deduction otherwise 2934  
allowed under division (S)(9)(a) of this section shall be reduced 2935  
to the extent the reimbursement is attributable to an amount the 2936  
taxpayer or decedent deducted under this section in any taxable 2937  
year. 2938

(b) Add any amount not otherwise included in Ohio taxable 2939  
income for any taxable year to the extent that the amount is 2940  
attributable to the recovery during the taxable year of any amount 2941  
deducted or excluded in computing federal or Ohio taxable income 2942  
in any taxable year, but only to the extent such amount has not 2943  
been distributed to beneficiaries for the taxable year. 2944

(10) Deduct any portion of the deduction described in section 2945  
1341(a)(2) of the Internal Revenue Code, for repaying previously 2946  
reported income received under a claim of right, that meets both 2947  
of the following requirements: 2948

(a) It is allowable for repayment of an item that was 2949  
included in the taxpayer's taxable income or the decedent's 2950  
adjusted gross income for a prior taxable year and did not qualify 2951  
for a credit under division (A) or (B) of section 5747.05 of the 2952

Revised Code for that year. 2953

(b) It does not otherwise reduce the taxpayer's taxable 2954  
income or the decedent's adjusted gross income for the current or 2955  
any other taxable year. 2956

(11) Add any amount claimed as a credit under section 2957  
5747.059 or 5747.65 of the Revised Code to the extent that the 2958  
amount satisfies either of the following: 2959

(a) The amount was deducted or excluded from the computation 2960  
of the taxpayer's federal taxable income as required to be 2961  
reported for the taxpayer's taxable year under the Internal 2962  
Revenue Code; 2963

(b) The amount resulted in a reduction in the taxpayer's 2964  
federal taxable income as required to be reported for any of the 2965  
taxpayer's taxable years under the Internal Revenue Code. 2966

(12) Deduct any amount, net of related expenses deducted in 2967  
computing federal taxable income, that a trust is required to 2968  
report as farm income on its federal income tax return, but only 2969  
if the assets of the trust include at least ten acres of land 2970  
satisfying the definition of "land devoted exclusively to 2971  
agricultural use" under section 5713.30 of the Revised Code, 2972  
regardless of whether the land is valued for tax purposes as such 2973  
land under sections 5713.30 to 5713.38 of the Revised Code. If the 2974  
trust is a pass-through entity investor, section 5747.231 of the 2975  
Revised Code applies in ascertaining if the trust is eligible to 2976  
claim the deduction provided by division (S)(12) of this section 2977  
in connection with the pass-through entity's farm income. 2978

Except for farm income attributable to the S portion of an 2979  
electing small business trust, the deduction provided by division 2980  
(S)(12) of this section is allowed only to the extent that the 2981  
trust has not distributed such farm income. Division (S)(12) of 2982  
this section applies only to taxable years of a trust beginning in 2983

2002 or thereafter.	2984
(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.	2985 2986 2987
(14) Add or deduct the amount the taxpayer would be required to add or deduct under division (A)(20) or (21) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.	2988 2989 2990 2991 2992 2993 2994
(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.	2995 2996
(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.	2997 2998 2999 3000
(V) "Limited liability company" means any limited liability company formed under Chapter 1705. of the Revised Code or under the laws of any other state.	3001 3002 3003
(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.	3004 3005 3006 3007
(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.	3008 3009
(Y) "Month" means a calendar month.	3010
(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.	3011 3012 3013

(AA)(1) "Eligible institution" means a state university or 3014  
state institution of higher education as defined in section 3015  
3345.011 of the Revised Code, or a private, nonprofit college, 3016  
university, or other post-secondary institution located in this 3017  
state that possesses a certificate of authorization issued by the 3018  
chancellor of higher education pursuant to Chapter 1713. of the 3019  
Revised Code or a certificate of registration issued by the state 3020  
board of career colleges and schools under Chapter 3332. of the 3021  
Revised Code. 3022

(2) "Qualified tuition and fees" means tuition and fees 3023  
imposed by an eligible institution as a condition of enrollment or 3024  
attendance, not exceeding two thousand five hundred dollars in 3025  
each of the individual's first two years of post-secondary 3026  
education. If the individual is a part-time student, "qualified 3027  
tuition and fees" includes tuition and fees paid for the academic 3028  
equivalent of the first two years of post-secondary education 3029  
during a maximum of five taxable years, not exceeding a total of 3030  
five thousand dollars. "Qualified tuition and fees" does not 3031  
include: 3032

(a) Expenses for any course or activity involving sports, 3033  
games, or hobbies unless the course or activity is part of the 3034  
individual's degree or diploma program; 3035

(b) The cost of books, room and board, student activity fees, 3036  
athletic fees, insurance expenses, or other expenses unrelated to 3037  
the individual's academic course of instruction; 3038

(c) Tuition, fees, or other expenses paid or reimbursed 3039  
through an employer, scholarship, grant in aid, or other 3040  
educational benefit program. 3041

(BB)(1) "Modified business income" means the business income 3042  
included in a trust's Ohio taxable income after such taxable 3043  
income is first reduced by the qualifying trust amount, if any. 3044

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

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

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

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

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

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

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

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in

section 5747.012 of the Revised Code, but only to the extent the 3075  
qualifying investment income does not otherwise constitute 3076  
modified business income and does not otherwise constitute a 3077  
qualifying trust amount. 3078

(b) The qualifying trust amount multiplied by a fraction, the 3079  
numerator of which is the sum of the book value of the qualifying 3080  
investee's physical assets in this state on the last day of the 3081  
qualifying investee's fiscal or calendar year ending immediately 3082  
prior to the day on which the trust recognizes the qualifying 3083  
trust amount, and the denominator of which is the sum of the book 3084  
value of the qualifying investee's total physical assets 3085  
everywhere on the last day of the qualifying investee's fiscal or 3086  
calendar year ending immediately prior to the day on which the 3087  
trust recognizes the qualifying trust amount. If, for a taxable 3088  
year, the trust recognizes a qualifying trust amount with respect 3089  
to more than one qualifying investee, the amount described in 3090  
division (BB)(4)(b) of this section shall equal the sum of the 3091  
products so computed for each such qualifying investee. 3092

(c)(i) With respect to a trust or portion of a trust that is 3093  
a resident as ascertained in accordance with division (I)(3)(d) of 3094  
this section, its modified nonbusiness income. 3095

(ii) With respect to a trust or portion of a trust that is 3096  
not a resident as ascertained in accordance with division 3097  
(I)(3)(d) of this section, the amount of its modified nonbusiness 3098  
income satisfying the descriptions in divisions (B)(2) to (5) of 3099  
section 5747.20 of the Revised Code, except as otherwise provided 3100  
in division (BB)(4)(c)(ii) of this section. With respect to a 3101  
trust or portion of a trust that is not a resident as ascertained 3102  
in accordance with division (I)(3)(d) of this section, the trust's 3103  
portion of modified nonbusiness income recognized from the sale, 3104  
exchange, or other disposition of a debt interest in or equity 3105  
interest in a section 5747.212 entity, as defined in section 3106

5747.212 of the Revised Code, without regard to division (A) of 3107  
that section, shall not be allocated to this state in accordance 3108  
with section 5747.20 of the Revised Code but shall be apportioned 3109  
to this state in accordance with division (B) of section 5747.212 3110  
of the Revised Code without regard to division (A) of that 3111  
section. 3112

If the allocation and apportionment of a trust's income under 3113  
divisions (BB)(4)(a) and (c) of this section do not fairly 3114  
represent the modified Ohio taxable income of the trust in this 3115  
state, the alternative methods described in division (C) of 3116  
section 5747.21 of the Revised Code may be applied in the manner 3117  
and to the same extent provided in that section. 3118

(5)(a) Except as set forth in division (BB)(5)(b) of this 3119  
section, "qualifying investee" means a person in which a trust has 3120  
an equity or ownership interest, or a person or unit of government 3121  
the debt obligations of either of which are owned by a trust. For 3122  
the purposes of division (BB)(2)(a) of this section and for the 3123  
purpose of computing the fraction described in division (BB)(4)(b) 3124  
of this section, all of the following apply: 3125

(i) If the qualifying investee is a member of a qualifying 3126  
controlled group on the last day of the qualifying investee's 3127  
fiscal or calendar year ending immediately prior to the date on 3128  
which the trust recognizes the gain or loss, then "qualifying 3129  
investee" includes all persons in the qualifying controlled group 3130  
on such last day. 3131

(ii) If the qualifying investee, or if the qualifying 3132  
investee and any members of the qualifying controlled group of 3133  
which the qualifying investee is a member on the last day of the 3134  
qualifying investee's fiscal or calendar year ending immediately 3135  
prior to the date on which the trust recognizes the gain or loss, 3136  
separately or cumulatively own, directly or indirectly, on the 3137  
last day of the qualifying investee's fiscal or calendar year 3138

ending immediately prior to the date on which the trust recognizes 3139  
the qualifying trust amount, more than fifty per cent of the 3140  
equity of a pass-through entity, then the qualifying investee and 3141  
the other members are deemed to own the proportionate share of the 3142  
pass-through entity's physical assets which the pass-through 3143  
entity directly or indirectly owns on the last day of the 3144  
pass-through entity's calendar or fiscal year ending within or 3145  
with the last day of the qualifying investee's fiscal or calendar 3146  
year ending immediately prior to the date on which the trust 3147  
recognizes the qualifying trust amount. 3148

(iii) For the purposes of division (BB)(5)(a)(iii) of this 3149  
section, "upper level pass-through entity" means a pass-through 3150  
entity directly or indirectly owning any equity of another 3151  
pass-through entity, and "lower level pass-through entity" means 3152  
that other pass-through entity. 3153

An upper level pass-through entity, whether or not it is also 3154  
a qualifying investee, is deemed to own, on the last day of the 3155  
upper level pass-through entity's calendar or fiscal year, the 3156  
proportionate share of the lower level pass-through entity's 3157  
physical assets that the lower level pass-through entity directly 3158  
or indirectly owns on the last day of the lower level pass-through 3159  
entity's calendar or fiscal year ending within or with the last 3160  
day of the upper level pass-through entity's fiscal or calendar 3161  
year. If the upper level pass-through entity directly and 3162  
indirectly owns less than fifty per cent of the equity of the 3163  
lower level pass-through entity on each day of the upper level 3164  
pass-through entity's calendar or fiscal year in which or with 3165  
which ends the calendar or fiscal year of the lower level 3166  
pass-through entity and if, based upon clear and convincing 3167  
evidence, complete information about the location and cost of the 3168  
physical assets of the lower pass-through entity is not available 3169  
to the upper level pass-through entity, then solely for purposes 3170

of ascertaining if a gain or loss constitutes a qualifying trust 3171  
amount, the upper level pass-through entity shall be deemed as 3172  
owning no equity of the lower level pass-through entity for each 3173  
day during the upper level pass-through entity's calendar or 3174  
fiscal year in which or with which ends the lower level 3175  
pass-through entity's calendar or fiscal year. Nothing in division 3176  
(BB)(5)(a)(iii) of this section shall be construed to provide for 3177  
any deduction or exclusion in computing any trust's Ohio taxable 3178  
income. 3179

(b) With respect to a trust that is not a resident for the 3180  
taxable year and with respect to a part of a trust that is not a 3181  
resident for the taxable year, "qualifying investee" for that 3182  
taxable year does not include a C corporation if both of the 3183  
following apply: 3184

(i) During the taxable year the trust or part of the trust 3185  
recognizes a gain or loss from the sale, exchange, or other 3186  
disposition of equity or ownership interests in, or debt 3187  
obligations of, the C corporation. 3188

(ii) Such gain or loss constitutes nonbusiness income. 3189

(6) "Available" means information is such that a person is 3190  
able to learn of the information by the due date plus extensions, 3191  
if any, for filing the return for the taxable year in which the 3192  
trust recognizes the gain or loss. 3193

(CC) "Qualifying controlled group" has the same meaning as in 3194  
section 5733.04 of the Revised Code. 3195

(DD) "Related member" has the same meaning as in section 3196  
5733.042 of the Revised Code. 3197

(EE)(1) For the purposes of division (EE) of this section: 3198

(a) "Qualifying person" means any person other than a 3199  
qualifying corporation. 3200

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

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

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

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

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

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

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

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

trustee of the trust. 3232

(4) A "pre-income tax trust" is a trust that satisfies all of 3233  
the following requirements: 3234

(a) The document or instrument creating the trust was 3235  
executed by the grantor before January 1, 1972; 3236

(b) The trust became irrevocable upon the creation of the 3237  
trust; and 3238

(c) The grantor was domiciled in this state at the time the 3239  
trust was created. 3240

(GG) "Uniformed services" has the same meaning as in 10 3241  
U.S.C. 101. 3242

(HH) "Taxable business income" means the amount by which an 3243  
individual's business income that is included in federal adjusted 3244  
gross income exceeds the amount of business income the individual 3245  
is authorized to deduct under division (A)(31) of this section for 3246  
the taxable year. 3247

(II) "Employer" does not include a franchisor with respect to 3248  
the franchisor's relationship with a franchisee or an employee of 3249  
a franchisee, unless the franchisor agrees to assume that role in 3250  
writing or a court of competent jurisdiction determines that the 3251  
franchisor exercises a type or degree of control over the 3252  
franchisee or the franchisee's employees that is not customarily 3253  
exercised by a franchisor for the purpose of protecting the 3254  
franchisor's trademark, brand, or both. For purposes of this 3255  
division, "franchisor" and "franchisee" have the same meanings as 3256  
in 16 C.F.R. 436.1. 3257

(JJ) "Employee" means an individual who is an employee under 3258  
the rules adopted by the superintendent of industrial compliance 3259  
pursuant to section 4177.01 of the Revised Code. 3260

**Section 7.** That existing sections 4113.21, 4121.01, 4123.01, 3261

4123.026, 4123.038, 4123.46, 4123.52, 4123.56, 4123.58, 4123.65, 3262  
4141.01, and 5747.01 of the Revised Code are hereby repealed. 3263

**Section 8.** Sections 4121.471, 4123.01, 4123.026, 4123.46, 3264  
4123.52, 4123.56, 4123.58, and 4123.65 of the Revised Code, as 3265  
amended or enacted by Section 6 of this act, apply to claims under 3266  
Chapter 4121., 4123., 4127., or 4131. of the Revised Code arising 3267  
on or after the effective date of this section, except that 3268  
division (F) of section 4123.56 and section 4123.58 of the Revised 3269  
Code as amended by Section 6 of this act also apply to claims that 3270  
are pending on the effective date of this section. 3271

**Section 9.** Division (A) of section 4123.512 of the Revised 3272  
Code, as amended by Sub. H.B. 27 of the 132nd General Assembly, 3273  
applies to claims under Chapter 4121., 4123., 4127., or 4131. of 3274  
the Revised Code pending on or arising after September 29, 2017. 3275