

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 355**

**Representative Retherford**

**Cosponsors: Representatives Maag, Young, Blessing, Henne, Cera, O'Brien, S.**

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**A BILL**

To amend sections 1349.61, 4121.01, 4123.01, 1  
4123.026, 4141.01, and 5747.01 and to enact 2  
sections 4175.01, 4175.02, 4175.03, 4175.04, 3  
4175.05, 4175.06, 4175.061, 4175.07, and 4175.99 4  
of the Revised Code to create a generally 5  
uniform definition of employee for specified 6  
labor laws and to prohibit employee 7  
misclassification under those laws. 8

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

**Section 1.** That sections 1349.61, 4121.01, 4123.01, 9  
4123.026, 4141.01, and 5747.01 be amended and sections 4175.01, 10  
4175.02, 4175.03, 4175.04, 4175.05, 4175.06, 4175.061, 4175.07, 11  
and 4175.99 of the Revised Code be enacted to read as follows: 12

**Sec. 1349.61.** (A) (1) Subject to division (C) of this 13  
section, no person or entity shall sell a gift card to a 14  
purchaser containing an expiration date that is less than two 15  
years after the date the gift card is issued. 16

(2) No person or entity, within two years after a gift 17  
card is issued, shall charge service charges or fees relative to 18

that gift card, including dormancy fees, latency fees, or 19  
administrative fees, that have the effect of reducing the total 20  
amount for which the holder of the gift card may redeem the gift 21  
card. 22

(B) A gift card sold without an expiration date is valid 23  
until redeemed or replaced with a new gift card. 24

(C) Division (A) of this section does not apply to any of 25  
the following gift cards: 26

(1) A gift card that is distributed by the issuer to a 27  
consumer pursuant to an awards, loyalty, or promotional program 28  
without any money or anything of value being given in exchange 29  
for the gift card by the consumer; 30

(2) A gift card that is sold below face value at a volume 31  
discount to employers or to nonprofit and charitable 32  
organizations for fundraising purposes, if the expiration date 33  
on that gift card is not more than thirty days after the date of 34  
sale; 35

(3) A gift card that is sold by a nonprofit or charitable 36  
organization for fundraising purposes; 37

(4) A gift card that an employer gives to an employee if 38  
use of the gift card is limited to the employer's business 39  
establishment, which may include a group of merchants that are 40  
affiliated with that business establishment; 41

(5) A gift certificate issued in accordance with section 42  
1533.131 of the Revised Code that may be used to obtain hunting 43  
and fishing licenses, fur taker, special deer, and special wild 44  
turkey permits, and wetlands habitat stamps; 45

(6) A gift card that is usable with multiple, unaffiliated 46

sellers of goods or services; 47

(7) A gift card that an employer issues to an employee in 48  
recognition of services performed by the employee. 49

(D) Whoever violates division (A) (2) of this section is 50  
liable to the holder for any amount that the redemption value of 51  
the gift card was reduced, any court costs incurred, and 52  
reasonable attorney's fees. 53

(E) As used in this section: 54

(1) "Gift card" means a certificate, electronic card, or 55  
other medium issued by a merchant that evidences the giving of 56  
consideration in exchange for the right to redeem the 57  
certificate, electronic card, or other medium for goods, food, 58  
services, credit, or money of at least an equal value, including 59  
any electronic card issued by a merchant with a monetary value 60  
where the issuer has received payment for the full monetary 61  
value for the future purchase or delivery of goods or services 62  
and any certificate issued by a merchant where the issuer has 63  
received payment for the full monetary face value of the 64  
certificate for the future purchase or delivery of goods and 65  
services. "Gift card" does not include a prepaid calling card 66  
used to make telephone calls. 67

(2) "Employee" means every person who may be required or 68  
directed by any employer, in consideration of direct or indirect 69  
gain or profit, to engage in any employment, or to go, or work, 70  
or be at any time in any place of employment. 71

(3) "Employer" and "employee" have has the same meanings— 72  
meaning as in section 4121.01 of the Revised Code. 73

**Sec. 4121.01.** (A) As used in sections 4121.01 to 4121.29 74  
of the Revised Code: 75

(1) "Place of employment" means every place, whether 76  
indoors or out, or underground, and the premises appurtenant 77  
thereto, where either temporarily or permanently any industry, 78  
trade, or business is carried on, or where any process or 79  
operation, directly or indirectly related to any industry, 80  
trade, or business, is carried on and where any person is 81  
directly or indirectly employed by another for direct or 82  
indirect gain or profit, but does not include any place where 83  
persons are employed in private domestic service or agricultural 84  
pursuits which do not involve the use of mechanical power. 85

(2) "Employment" means any trade, occupation, or process 86  
of manufacture or any method of carrying on such trade, 87  
occupation, or process of manufacture in which any person may be 88  
engaged, except in such private domestic service or agricultural 89  
pursuits as do not involve the use of mechanical power. 90

(3) "Employer" means every person, firm, corporation, 91  
agent, manager, representative, or other person having control 92  
or custody of any employment, place of employment, or employee. 93

(4) "Employee" means every person who ~~may be required or~~ 94  
~~directed by any employer, in consideration of direct or indirect~~ 95  
~~gain or profit, to engage in any employment, or to go, or work,~~ 96  
~~or be at any time in any place of employment~~ is an employee 97  
under the rules adopted by the administrator of workers' 98  
compensation pursuant to section 4175.01 of the Revised Code. 99

(5) "Frequenter" means every person, other than an 100  
employee, who may go in or be in a place of employment under 101  
circumstances which render the person other than a trespasser. 102

(6) "Deputy" means any person employed by the industrial 103  
commission or the bureau of workers' compensation, designated as 104

a deputy by the commission or the administrator of workers' 105  
compensation, who possesses special, technical, scientific, 106  
managerial, professional, or personal abilities or qualities in 107  
matters within the jurisdiction of the commission or the bureau, 108  
and who may be engaged in the performance of duties under the 109  
direction of the commission or the bureau calling for the 110  
exercise of such abilities or qualities. 111

(7) "Order" means any decision, rule, regulation, 112  
direction, requirement, or standard, or any other determination 113  
or decision that the bureau is empowered to and does make. 114

(8) "General order" means an order that applies generally 115  
throughout the state to all persons, employments, or places of 116  
employment, or all persons, employments, or places of employment 117  
of a class under the jurisdiction of the bureau. All other 118  
orders shall be considered special orders. 119

(9) "Local order" means any ordinance, order, rule, or 120  
determination of the legislative authority of any municipal 121  
corporation, or any trustees, or board or officers of any 122  
municipal corporation upon any matter over which the bureau has 123  
jurisdiction. 124

(10) "Welfare" means comfort, decency, and moral well- 125  
being. 126

(11) "Safe" or "safety," as applied to any employment or a 127  
place of employment, means such freedom from danger to the life, 128  
health, safety, or welfare of employees or frequenters as the 129  
nature of the employment will reasonably permit, including 130  
requirements as to the hours of labor with relation to the 131  
health and welfare of employees. 132

(12) "Employee organization" means any labor or bona fide 133

organization in which employees participate and that exists for 134  
the purpose, in whole or in part, of dealing with employers 135  
concerning grievances, labor disputes, wages, hours, terms, and 136  
other conditions of employment. 137

(B) As used in the Revised Code: 138

(1) "Industrial commission" means the chairperson of the 139  
three-member industrial commission created pursuant to section 140  
4121.02 of the Revised Code when the context refers to the 141  
authority vested in the chairperson as the chief executive 142  
officer of the three-member industrial commission pursuant to 143  
divisions (A), (B), (C), and (D) of section 4121.03 of the 144  
Revised Code. 145

(2) "Industrial commission" means the three-member 146  
industrial commission created pursuant to section 4121.02 of the 147  
Revised Code when the context refers to the authority vested in 148  
the three-member industrial commission pursuant to division (E) 149  
of section 4121.03 of the Revised Code. 150

(3) "Industrial commission" means the industrial 151  
commission as a state agency when the context refers to the 152  
authority vested in the industrial commission as a state agency. 153

**Sec. 4123.01.** As used in this chapter: 154

(A) (1) "Employee" means: 155

~~(a) Every person in the service of the state, or of any 156  
county, municipal corporation, township, or school district 157  
therein, including regular members of lawfully constituted 158  
police and fire departments of municipal corporations and 159  
townships, whether paid or volunteer, and wherever serving 160  
within the state or on temporary assignment outside thereof, and 161  
executive officers of boards of education, under any appointment 162~~

~~or contract of hire, express or implied, oral or written,~~ 163  
~~including any elected official of the state, or of any county,~~ 164  
~~municipal corporation, or township, or members of boards of~~ 165  
~~education.~~ 166

~~As used in division (A) (1) (a) of this section, the term~~ 167  
~~"employee" every person who is an employee under the rules~~ 168  
~~adopted by the administrator of workers' compensation pursuant~~ 169  
~~to section 4175.01 of the Revised Code, except that "employee"~~ 170  
~~also includes the following persons when responding to an~~ 171  
~~inherently dangerous situation that calls for an immediate~~ 172  
~~response on the part of the person, regardless of whether the~~ 173  
~~person is within the limits of the jurisdiction of the person's~~ 174  
~~regular employment or voluntary service when responding, on the~~ 175  
~~condition that the person responds to the situation as the~~ 176  
~~person otherwise would if the person were on duty in the~~ 177  
~~person's jurisdiction:~~ 178

~~(i) (a) Off-duty peace officers. As used in division (A)~~ 179  
~~(1) (a) (i) of this section, "peace officer" has the same meaning~~ 180  
~~as in section 2935.01 of the Revised Code.~~ 181

~~(ii) (b) Off-duty firefighters, whether paid or volunteer,~~ 182  
~~of a lawfully constituted fire department.~~ 183

~~(iii) (c) Off-duty first responders, emergency medical~~ 184  
~~technicians-basic, emergency medical technicians-intermediate,~~ 185  
~~or emergency medical technicians-paramedic, whether paid or~~ 186  
~~volunteer, of an ambulance service organization or emergency~~ 187  
~~medical service organization pursuant to Chapter 4765. of the~~ 188  
~~Revised Code.~~ 189

~~(b) Every person in the service of any person, firm, or~~ 190  
~~private corporation, including any public service corporation,~~ 191

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

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

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

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

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

~~(iv) The person is required to perform the work  
personally;~~

~~(v) The person is hired, supervised, or paid by the other  
contracting party;~~

~~(vi) A continuing relationship exists between the person  
and the other contracting party that contemplates continuing or  
recurring work even if the work is not full time;~~



<del>(vii) The person's hours of work are established by the</del>	220
<del>other contracting party;</del>	221
<del>(viii) The person is required to devote full time to the</del>	222
<del>business of the other contracting party;</del>	223
<del>(ix) The person is required to perform the work on the</del>	224
<del>premises of the other contracting party;</del>	225
<del>(x) The person is required to follow the order of work set</del>	226
<del>by the other contracting party;</del>	227
<del>(xi) The person is required to make oral or written</del>	228
<del>reports of progress to the other contracting party;</del>	229
<del>(xii) The person is paid for services on a regular basis</del>	230
<del>such as hourly, weekly, or monthly;</del>	231
<del>(xiii) The person's expenses are paid for by the other</del>	232
<del>contracting party;</del>	233
<del>(xiv) The person's tools and materials are furnished by</del>	234
<del>the other contracting party;</del>	235
<del>(xv) The person is provided with the facilities used to</del>	236
<del>perform services;</del>	237
<del>(xvi) The person does not realize a profit or suffer a</del>	238
<del>loss as a result of the services provided;</del>	239
<del>(xvii) The person is not performing services for a number</del>	240
<del>of employers at the same time;</del>	241
<del>(xviii) The person does not make the same services</del>	242
<del>available to the general public;</del>	243
<del>(xix) The other contracting party has a right to discharge</del>	244
<del>the person;</del>	245

~~(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.~~

Every person in the service of any independent contractor  
or subcontractor who has failed to pay into the state insurance  
fund the amount of premium determined and fixed by the  
administrator ~~of workers' compensation~~ for the person's  
employment or occupation or if a self-insuring employer has  
failed to pay compensation and benefits directly to the  
employer's injured and to the dependents of the employer's  
killed employees as required by section 4123.35 of the Revised  
Code, shall be considered as the employee of the person who has  
entered into a contract, whether written or verbal, with such  
independent contractor unless such employees or their legal  
representatives or beneficiaries elect, after injury or death,  
to regard such independent contractor as the employer.

(2) "Employee" does not mean:

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

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation; or

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

Any employer may elect to include as an "employee" within  
this chapter, any person excluded from the definition of

"employee" pursuant to division (A) (2) of this section. If an 275  
employer is a partnership, sole proprietorship, individual 276  
incorporated as a corporation, or family farm corporation, such 277  
employer may elect to include as an "employee" within this 278  
chapter, any member of such partnership, the owner of the sole 279  
proprietorship, the individual incorporated as a corporation, or 280  
the officers of the family farm corporation. In the event of an 281  
election, the employer shall serve upon the bureau of workers' 282  
compensation written notice naming the persons to be covered, 283  
include such employee's remuneration for premium purposes in all 284  
future payroll reports, and no person excluded from the 285  
definition of "employee" pursuant to division (A) (2) of this 286  
section, proprietor, individual incorporated as a corporation, 287  
or partner shall be deemed an employee within this division 288  
until the employer has served such notice. 289

For informational purposes only, the bureau shall 290  
prescribe such language as it considers appropriate, on such of 291  
its forms as it considers appropriate, to advise employers of 292  
their right to elect to include as an "employee" within this 293  
chapter a sole proprietor, any member of a partnership, an 294  
individual incorporated as a corporation, the officers of a 295  
family farm corporation, or a person excluded from the 296  
definition of "employee" under division (A) (2) of this section, 297  
that they should check any health and disability insurance 298  
policy, or other form of health and disability plan or contract, 299  
presently covering them, or the purchase of which they may be 300  
considering, to determine whether such policy, plan, or contract 301  
excludes benefits for illness or injury that they might have 302  
elected to have covered by workers' compensation. 303

(B) "Employer" means: 304

(1) The state, including state hospitals, each county, 305  
municipal corporation, township, school district, and hospital 306  
owned by a political subdivision or subdivisions other than the 307  
state; 308

(2) Every person, firm, professional employer 309  
organization, and private corporation, including any public 310  
service corporation, that (a) has in service one or more 311  
employees or shared employees regularly in the same business or 312  
in or about the same establishment under any contract of hire, 313  
express or implied, oral or written, or (b) is bound by any such 314  
contract of hire or by any other written contract, to pay into 315  
the insurance fund the premiums provided by this chapter. 316

All such employers are subject to this chapter. Any member 317  
of a firm or association, who regularly performs manual labor in 318  
or about a mine, factory, or other establishment, including a 319  
household establishment, shall be considered an employee in 320  
determining whether such person, firm, or private corporation, 321  
or public service corporation, has in its service, one or more 322  
employees and the employer shall report the income derived from 323  
such labor to the bureau as part of the payroll of such 324  
employer, and such member shall thereupon be entitled to all the 325  
benefits of an employee. 326

(C) "Injury" includes any injury, whether caused by 327  
external accidental means or accidental in character and result, 328  
received in the course of, and arising out of, the injured 329  
employee's employment. "Injury" does not include: 330

(1) Psychiatric conditions except where the claimant's 331  
psychiatric conditions have arisen from an injury or 332  
occupational disease sustained by that claimant or where the 333  
claimant's psychiatric conditions have arisen from sexual 334

conduct in which the claimant was forced by threat of physical	335
harm to engage or participate;	336
(2) Injury or disability caused primarily by the natural	337
deterioration of tissue, an organ, or part of the body;	338
(3) Injury or disability incurred in voluntary	339
participation in an employer-sponsored recreation or fitness	340
activity if the employee signs a waiver of the employee's right	341
to compensation or benefits under this chapter prior to engaging	342
in the recreation or fitness activity;	343
(4) A condition that pre-existed an injury unless that	344
pre-existing condition is substantially aggravated by the	345
injury. Such a substantial aggravation must be documented by	346
objective diagnostic findings, objective clinical findings, or	347
objective test results. Subjective complaints may be evidence of	348
such a substantial aggravation. However, subjective complaints	349
without objective diagnostic findings, objective clinical	350
findings, or objective test results are insufficient to	351
substantiate a substantial aggravation.	352
(D) "Child" includes a posthumous child and a child	353
legally adopted prior to the injury.	354
(E) "Family farm corporation" means a corporation founded	355
for the purpose of farming agricultural land in which the	356
majority of the voting stock is held by and the majority of the	357
stockholders are persons or the spouse of persons related to	358
each other within the fourth degree of kinship, according to the	359
rules of the civil law, and at least one of the related persons	360
is residing on or actively operating the farm, and none of whose	361
stockholders are a corporation. A family farm corporation does	362
not cease to qualify under this division where, by reason of any	363

devise, bequest, or the operation of the laws of descent or 364  
distribution, the ownership of shares of voting stock is 365  
transferred to another person, as long as that person is within 366  
the degree of kinship stipulated in this division. 367

(F) "Occupational disease" means a disease contracted in 368  
the course of employment, which by its causes and the 369  
characteristics of its manifestation or the condition of the 370  
employment results in a hazard which distinguishes the 371  
employment in character from employment generally, and the 372  
employment creates a risk of contracting the disease in greater 373  
degree and in a different manner from the public in general. 374

(G) "Self-insuring employer" means an employer who is 375  
granted the privilege of paying compensation and benefits 376  
directly under section 4123.35 of the Revised Code, including a 377  
board of county commissioners for the sole purpose of 378  
constructing a sports facility as defined in section 307.696 of 379  
the Revised Code, provided that the electors of the county in 380  
which the sports facility is to be built have approved 381  
construction of a sports facility by ballot election no later 382  
than November 6, 1997. 383

(H) "Private employer" means an employer as defined in 384  
division (B) (2) of this section. 385

(I) "Professional employer organization" has the same 386  
meaning as in section 4125.01 of the Revised Code. 387

(J) "Public employer" means an employer as defined in 388  
division (B) (1) of this section. 389

(K) "Sexual conduct" means vaginal intercourse between a 390  
male and female; anal intercourse, fellatio, and cunnilingus 391  
between persons regardless of gender; and, without privilege to 392

do so, the insertion, however slight, of any part of the body or 393  
any instrument, apparatus, or other object into the vaginal or 394  
anal cavity of another. Penetration, however slight, is 395  
sufficient to complete vaginal or anal intercourse. 396

(L) "Other-states' insurer" means an insurance company 397  
that is authorized to provide workers' compensation insurance 398  
coverage in any of the states that permit employers to obtain 399  
insurance for workers' compensation claims through insurance 400  
companies. 401

(M) "Other-states' coverage" means both of the following: 402

(1) Insurance coverage secured by an eligible employer for 403  
workers' compensation claims of employees who are in employment 404  
relationships localized in a state other than this state or 405  
those employees' dependents; 406

(2) Insurance coverage secured by an eligible employer for 407  
workers' compensation claims that arise in a state other than 408  
this state where an employer elects to obtain coverage through 409  
either the administrator or an other-states' insurer. 410

(N) "Limited other-states coverage" means insurance 411  
coverage provided by the administrator to an eligible employer 412  
for workers' compensation claims of employees who are in an 413  
employment relationship localized in this state but are 414  
temporarily working in a state other than this state, or those 415  
employees' dependents. 416

**Sec. 4123.026.** (A) The administrator of workers' 417  
compensation, or a self-insuring public employer for the peace 418  
officers, firefighters, and emergency medical workers employed 419  
by or volunteering for that self-insuring public employer, shall 420  
pay the costs of conducting post-exposure medical diagnostic 421

services, consistent with the standards of medical care existing 422  
at the time of the exposure, to investigate whether an injury or 423  
occupational disease was sustained by a peace officer, 424  
firefighter, or emergency medical worker when coming into 425  
contact with the blood or other body fluid of another person in 426  
the course of and arising out of the peace officer's, 427  
firefighter's, or emergency medical worker's employment, or when 428  
responding to an inherently dangerous situation in the manner 429  
described in, and in accordance with the conditions specified 430  
under, division (A) (1) ~~(a)~~ of section 4123.01 of the Revised 431  
Code, through any of the following means: 432

(1) Splash or spatter in the eye or mouth, including when 433  
received in the course of conducting mouth-to-mouth 434  
resuscitation; 435

(2) A puncture in the skin; 436

(3) A cut in the skin or another opening in the skin such 437  
as an open sore, wound, lesion, abrasion, or ulcer. 438

(B) As used in this section: 439

(1) "Peace officer" has the same meaning as in section 440  
2935.01 of the Revised Code. 441

(2) "Firefighter" means a firefighter, whether paid or 442  
volunteer, of a lawfully constituted fire department. 443

(3) "Emergency medical worker" means a first responder, 444  
emergency medical technician-basic, emergency medical 445  
technician-intermediate, or emergency medical technician- 446  
paramedic, certified under Chapter 4765. of the Revised Code, 447  
whether paid or volunteer. 448

**Sec. 4141.01.** As used in this chapter, unless the context 449



otherwise requires: 450

(A) (1) "Employer" means the state, its instrumentalities, 451  
its political subdivisions and their instrumentalities, Indian 452  
tribes, and any individual or type of organization including any 453  
partnership, limited liability company, association, trust, 454  
estate, joint-stock company, insurance company, or corporation, 455  
whether domestic or foreign, or the receiver, trustee in 456  
bankruptcy, trustee, or the successor thereof, or the legal 457  
representative of a deceased person who subsequent to December 458  
31, 1971, or in the case of political subdivisions or their 459  
instrumentalities, subsequent to December 31, 1973: 460

(a) Had in employment at least one individual, or in the 461  
case of a nonprofit organization, subsequent to December 31, 462  
1973, had not less than four individuals in employment for some 463  
portion of a day in each of twenty different calendar weeks, in 464  
either the current or the preceding calendar year whether or not 465  
the same individual was in employment in each such day; or 466

(b) Except for a nonprofit organization, had paid for 467  
service in employment wages of fifteen hundred dollars or more 468  
in any calendar quarter in either the current or preceding 469  
calendar year; or 470

(c) Had paid, subsequent to December 31, 1977, for 471  
employment in domestic service in a local college club, or local 472  
chapter of a college fraternity or sorority, cash remuneration 473  
of one thousand dollars or more in any calendar quarter in the 474  
current calendar year or the preceding calendar year, or had 475  
paid subsequent to December 31, 1977, for employment in domestic 476  
service in a private home cash remuneration of one thousand 477  
dollars in any calendar quarter in the current calendar year or 478  
the preceding calendar year: 479

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

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

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

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

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

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

(i) For which, within either the current or preceding  
calendar year, service, except for domestic service in a private  
home not covered under division (A) (1) (c) of this section, is or  
was performed with respect to which such employer is liable for

any federal tax against which credit may be taken for 509  
contributions required to be paid into a state unemployment 510  
fund; 511

(ii) Which, as a condition for approval of this chapter 512  
for full tax credit against the tax imposed by the "Federal 513  
Unemployment Tax Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, 514  
is required, pursuant to such act to be an employer under this 515  
chapter; or 516

(iii) Who became an employer by election under division 517  
(A) (4) or (5) of this section and for the duration of such 518  
election; or 519

(f) In the case of the state, its instrumentalities, its 520  
political subdivisions, and their instrumentalities, and Indian 521  
tribes, had in employment, as defined in divisions (B) (2) (a) and 522  
(B) (2) (1) of this section, at least one individual; 523

(g) For the purposes of division (A) (1) (a) of this 524  
section, if any week includes both the thirty-first day of 525  
December and the first day of January, the days of that week 526  
before the first day of January shall be considered one calendar 527  
week and the days beginning the first day of January another 528  
week. 529

(2) Each individual employed to perform or to assist in 530  
performing the work of any agent or employee of an employer is 531  
employed by such employer for all the purposes of this chapter, 532  
whether such individual was hired or paid directly by such 533  
employer or by such agent or employee, provided the employer had 534  
actual or constructive knowledge of the work. All individuals 535  
performing services for an employer of any person in this state 536  
who maintains two or more establishments within this state are 537

employed by a single employer for the purposes of this chapter.	538
(3) An employer subject to this chapter within any	539
calendar year is subject to this chapter during the whole of	540
such year and during the next succeeding calendar year.	541
(4) An employer not otherwise subject to this chapter who	542
files with the director of job and family services a written	543
election to become an employer subject to this chapter for not	544
less than two calendar years shall, with the written approval of	545
such election by the director, become an employer subject to	546
this chapter to the same extent as all other employers as of the	547
date stated in such approval, and shall cease to be subject to	548
this chapter as of the first day of January of any calendar year	549
subsequent to such two calendar years only if at least thirty	550
days prior to such first day of January the employer has filed	551
with the director a written notice to that effect.	552
(5) Any employer for whom services that do not constitute	553
employment are performed may file with the director a written	554
election that all such services performed by individuals in the	555
employer's employ in one or more distinct establishments or	556
places of business shall be deemed to constitute employment for	557
all the purposes of this chapter, for not less than two calendar	558
years. Upon written approval of the election by the director,	559
such services shall be deemed to constitute employment subject	560
to this chapter from and after the date stated in such approval.	561
Such services shall cease to be employment subject to this	562
chapter as of the first day of January of any calendar year	563
subsequent to such two calendar years only if at least thirty	564
days prior to such first day of January such employer has filed	565
with the director a written notice to that effect.	566
(B) (1) "Employment" means service performed by an	567

individual for remuneration under any contract of hire, written 568  
or oral, express or implied, including service performed in 569  
interstate commerce and service performed by an officer of a 570  
corporation, without regard to whether such service is 571  
executive, managerial, or manual in nature, and without regard 572  
to whether such officer is a stockholder or a member of the 573  
board of directors of the corporation, unless it is shown to the 574  
satisfaction of the director, based upon a determination made by 575  
the administrator of workers' compensation under Chapter 4175. 576  
of the Revised Code, that such individual has been and will 577  
continue to be free from direction or control over the 578  
performance of such service, both under a contract of service 579  
and in fact. ~~The director shall adopt rules to define "direction~~ 580  
~~or control."~~ 581

(2) "Employment" includes: 582

(a) Service performed after December 31, 1977, by an 583  
individual in the employ of the state or any of its 584  
instrumentalities, or any political subdivision thereof or any 585  
of its instrumentalities or any instrumentality of more than one 586  
of the foregoing or any instrumentality of any of the foregoing 587  
and one or more other states or political subdivisions and 588  
without regard to divisions (A) (1) (a) and (b) of this section, 589  
provided that such service is excluded from employment as 590  
defined in the "Federal Unemployment Tax Act," 53 Stat. 183, 26 591  
U.S.C.A. 3301, 3306(c) (7) and is not excluded under division (B) 592  
(3) of this section; or the services of employees covered by 593  
voluntary election, as provided under divisions (A) (4) and (5) 594  
of this section; 595

(b) Service performed after December 31, 1971, by an 596  
individual in the employ of a religious, charitable, 597

educational, or other organization which is excluded from the 598  
term "employment" as defined in the "Federal Unemployment Tax 599  
Act," 84 Stat. 713, 26 U.S.C.A. 3301 to 3311, solely by reason 600  
of section 26 U.S.C.A. 3306(c) (8) of that act and is not 601  
excluded under division (B) (3) of this section; 602

(c) Domestic service performed after December 31, 1977, 603  
for an employer, as provided in division (A) (1) (c) of this 604  
section; 605

(d) Agricultural labor performed after December 31, 1977, 606  
for a farm operator or a crew leader, as provided in division 607  
(A) (1) (d) of this section; 608

(e) Service not covered under division (B) (1) of this 609  
section which is performed after December 31, 1971: 610

(i) As an agent-driver or commission-driver engaged in 611  
distributing meat products, vegetable products, fruit products, 612  
bakery products, beverages other than milk, laundry, or dry- 613  
cleaning services, for the individual's employer or principal; 614

(ii) As a traveling or city salesperson, other than as an 615  
agent-driver or commission-driver, engaged on a full-time basis 616  
in the solicitation on behalf of and in the transmission to the 617  
salesperson's employer or principal except for sideline sales 618  
activities on behalf of some other person of orders from 619  
wholesalers, retailers, contractors, or operators of hotels, 620  
restaurants, or other similar establishments for merchandise for 621  
resale, or supplies for use in their business operations, 622  
provided that for the purposes of division (B) (2) (e) (ii) of this 623  
section, the services shall be deemed employment if the contract 624  
of service contemplates that substantially all of the services 625  
are to be performed personally by the individual and that the 626

individual does not have a substantial investment in facilities 627  
used in connection with the performance of the services other 628  
than in facilities for transportation, and the services are not 629  
in the nature of a single transaction that is not a part of a 630  
continuing relationship with the person for whom the services 631  
are performed. 632

(f) An individual's entire service performed within or 633  
both within and without the state if: 634

(i) The service is localized in this state. 635

(ii) The service is not localized in any state, but some 636  
of the service is performed in this state and either the base of 637  
operations, or if there is no base of operations then the place 638  
from which such service is directed or controlled, is in this 639  
state or the base of operations or place from which such service 640  
is directed or controlled is not in any state in which some part 641  
of the service is performed but the individual's residence is in 642  
this state. 643

(g) Service not covered under division (B) (2) (f) (ii) of 644  
this section and performed entirely without this state, with 645  
respect to no part of which contributions are required and paid 646  
under an unemployment compensation law of any other state, the 647  
Virgin Islands, Canada, or of the United States, if the 648  
individual performing such service is a resident of this state 649  
and the director approves the election of the employer for whom 650  
such services are performed; or, if the individual is not a 651  
resident of this state but the place from which the service is 652  
directed or controlled is in this state, the entire services of 653  
such individual shall be deemed to be employment subject to this 654  
chapter, provided service is deemed to be localized within this 655  
state if the service is performed entirely within this state or 656

if the service is performed both within and without this state 657  
but the service performed without this state is incidental to 658  
the individual's service within the state, for example, is 659  
temporary or transitory in nature or consists of isolated 660  
transactions; 661

(h) Service of an individual who is a citizen of the 662  
United States, performed outside the United States except in 663  
Canada after December 31, 1971, or the Virgin Islands, after 664  
December 31, 1971, and before the first day of January of the 665  
year following that in which the United States secretary of 666  
labor approves the Virgin Islands law for the first time, in the 667  
employ of an American employer, other than service which is 668  
"employment" under divisions (B) (2) (f) and (g) of this section 669  
or similar provisions of another state's law, if: 670

(i) The employer's principal place of business in the 671  
United States is located in this state; 672

(ii) The employer has no place of business in the United 673  
States, but the employer is an individual who is a resident of 674  
this state; or the employer is a corporation which is organized 675  
under the laws of this state, or the employer is a partnership 676  
or a trust and the number of partners or trustees who are 677  
residents of this state is greater than the number who are 678  
residents of any other state; or 679

(iii) None of the criteria of divisions (B) (2) (f) (i) and 680  
(ii) of this section is met but the employer has elected 681  
coverage in this state or the employer having failed to elect 682  
coverage in any state, the individual has filed a claim for 683  
benefits, based on such service, under this chapter. 684

(i) For the purposes of division (B) (2) (h) of this 685



section, the term "American employer" means an employer who is 686  
an individual who is a resident of the United States; or a 687  
partnership, if two-thirds or more of the partners are residents 688  
of the United States; or a trust, if all of the trustees are 689  
residents of the United States; or a corporation organized under 690  
the laws of the United States or of any state, provided the term 691  
"United States" includes the states, the District of Columbia, 692  
the Commonwealth of Puerto Rico, and the Virgin Islands. 693

(j) Notwithstanding any other provisions of divisions (B) 694  
(1) and (2) of this section, service, except for domestic 695  
service in a private home not covered under division (A) (1) (c) 696  
of this section, with respect to which a tax is required to be 697  
paid under any federal law imposing a tax against which credit 698  
may be taken for contributions required to be paid into a state 699  
unemployment fund, or service, except for domestic service in a 700  
private home not covered under division (A) (1) (c) of this 701  
section, which, as a condition for full tax credit against the 702  
tax imposed by the "Federal Unemployment Tax Act," 84 Stat. 713, 703  
26 U.S.C.A. 3301 to 3311, is required to be covered under this 704  
chapter. 705

(k) Construction services performed by any individual 706  
under a construction contract, as defined in section 4141.39 of 707  
the Revised Code, ~~if the director determines that the employer~~ 708  
~~for whom services are performed has the right to direct or~~ 709  
~~control the performance of the services and that the individuals~~ 710  
~~who perform the services receive remuneration for the services~~ 711  
~~performed. The director shall presume that the employer for whom~~ 712  
~~services are performed has the right to direct or control the~~ 713  
~~performance of the services if ten or more of the following~~ 714  
~~criteria apply:~~ 715

- ~~(i) The employer directs or controls the manner or method by which instructions are given to the individual performing services;~~ 716  
717  
718
- ~~(ii) The employer requires particular training for the individual performing services;~~ 719  
720
- ~~(iii) Services performed by the individual are integrated into the regular functioning of the employer;~~ 721  
722
- ~~(iv) The employer requires that services be provided by a particular individual;~~ 723  
724
- ~~(v) The employer hires, supervises, or pays the wages of the individual performing services;~~ 725  
726
- ~~(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;~~ 727  
728  
729
- ~~(vii) The employer requires the individual to perform services during established hours;~~ 730  
731
- ~~(viii) The employer requires that the individual performing services be devoted on a full-time basis to the business of the employer;~~ 732  
733  
734
- ~~(ix) The employer requires the individual to perform services on the employer's premises;~~ 735  
736
- ~~(x) The employer requires the individual performing services to follow the order of work established by the employer;~~ 737  
738  
739
- ~~(xi) The employer requires the individual performing services to make oral or written reports of progress;~~ 740  
741
- ~~(xii) The employer makes payment to the individual for~~ 742

<del>services on a regular basis, such as hourly, weekly, or monthly;</del>	743
<del>(xiii) The employer pays expenses for the individual performing services;</del>	744
<del>(xiv) The employer furnishes the tools and materials for use by the individual to perform services;</del>	746
<del>(xv) The individual performing services has not invested in the facilities used to perform services;</del>	748
<del>(xvi) The individual performing services does not realize a profit or suffer a loss as a result of the performance of the services;</del>	750
<del>(xvii) The individual performing services is not performing services for more than two employers simultaneously;</del>	753
<del>(xviii) The individual performing services does not make the services available to the general public;</del>	755
<del>(xix) The employer has a right to discharge the individual performing services;</del>	757
<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>	759
(1) Service performed by an individual in the employ of an Indian tribe as defined by section 4(e) of the "Indian Self-Determination and Education Assistance Act," 88 Stat. 2204 (1975), 25 U.S.C.A. 450b(e), including any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe provided that the service is excluded from employment as defined in the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 and 3306(c)(7) and is not excluded	763
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	770

under division (B) (3) of this section. 771

(3) "Employment" does not include the following services 772  
if they are found not subject to the "Federal Unemployment Tax 773  
Act," 84 Stat. 713 (1970), 26 U.S.C.A. 3301 to 3311, and if the 774  
services are not required to be included under division (B) (2) 775  
(j) of this section: 776

(a) Service performed after December 31, 1977, in 777  
agricultural labor, except as provided in division (A) (1) (d) of 778  
this section; 779

(b) Domestic service performed after December 31, 1977, in 780  
a private home, local college club, or local chapter of a 781  
college fraternity or sorority except as provided in division 782  
(A) (1) (c) of this section; 783

(c) Service performed after December 31, 1977, for this 784  
state or a political subdivision as described in division (B) (2) 785  
(a) of this section when performed: 786

(i) As a publicly elected official; 787

(ii) As a member of a legislative body, or a member of the 788  
judiciary; 789

(iii) As a military member of the Ohio national guard; 790

(iv) As an employee, not in the classified service as 791  
defined in section 124.11 of the Revised Code, serving on a 792  
temporary basis in case of fire, storm, snow, earthquake, flood, 793  
or similar emergency; 794

(v) In a position which, under or pursuant to law, is 795  
designated as a major nontenured policymaking or advisory 796  
position, not in the classified service of the state, or a 797  
policymaking or advisory position the performance of the duties 798

of which ordinarily does not require more than eight hours per 799  
week. 800

(d) In the employ of any governmental unit or 801  
instrumentality of the United States; 802

(e) Service performed after December 31, 1971: 803

(i) Service in the employ of an educational institution or 804  
institution of higher education, including those operated by the 805  
state or a political subdivision, if such service is performed 806  
by a student who is enrolled and is regularly attending classes 807  
at the educational institution or institution of higher 808  
education; or 809

(ii) By an individual who is enrolled at a nonprofit or 810  
public educational institution which normally maintains a 811  
regular faculty and curriculum and normally has a regularly 812  
organized body of students in attendance at the place where its 813  
educational activities are carried on as a student in a full- 814  
time program, taken for credit at the institution, which 815  
combines academic instruction with work experience, if the 816  
service is an integral part of the program, and the institution 817  
has so certified to the employer, provided that this subdivision 818  
shall not apply to service performed in a program established 819  
for or on behalf of an employer or group of employers. 820

(f) Service performed by an individual in the employ of 821  
the individual's son, daughter, or spouse and service performed 822  
by a child under the age of eighteen in the employ of the 823  
child's father or mother; 824

(g) Service performed for one or more principals by an 825  
individual who is compensated on a commission basis, who in the 826  
performance of the work is master of the individual's own time 827

and efforts, and whose remuneration is wholly dependent on the 828  
amount of effort the individual chooses to expend, and which 829  
service is not subject to the "Federal Unemployment Tax Act," 53 830  
Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. Service performed 831  
after December 31, 1971: 832

(i) By an individual for an employer as an insurance agent 833  
or as an insurance solicitor, if all this service is performed 834  
for remuneration solely by way of commission; 835

(ii) As a home worker performing work, according to 836  
specifications furnished by the employer for whom the services 837  
are performed, on materials or goods furnished by such employer 838  
which are required to be returned to the employer or to a person 839  
designated for that purpose. 840

(h) Service performed after December 31, 1971: 841

(i) In the employ of a church or convention or association 842  
of churches, or in an organization which is operated primarily 843  
for religious purposes and which is operated, supervised, 844  
controlled, or principally supported by a church or convention 845  
or association of churches; 846

(ii) By a duly ordained, commissioned, or licensed 847  
minister of a church in the exercise of the individual's 848  
ministry or by a member of a religious order in the exercise of 849  
duties required by such order; or 850

(iii) In a facility conducted for the purpose of carrying 851  
out a program of rehabilitation for individuals whose earning 852  
capacity is impaired by age or physical or mental deficiency or 853  
injury, or providing remunerative work for individuals who 854  
because of their impaired physical or mental capacity cannot be 855  
readily absorbed in the competitive labor market, by an 856

individual receiving such rehabilitation or remunerative work. 857

(i) Service performed after June 30, 1939, with respect to 858  
which unemployment compensation is payable under the "Railroad 859  
Unemployment Insurance Act," 52 Stat. 1094 (1938), 45 U.S.C. 860  
351; 861

(j) Service performed by an individual in the employ of 862  
any organization exempt from income tax under section 501 of the 863  
"Internal Revenue Code of 1954," if the remuneration for such 864  
service does not exceed fifty dollars in any calendar quarter, 865  
or if such service is in connection with the collection of dues 866  
or premiums for a fraternal beneficial society, order, or 867  
association and is performed away from the home office or is 868  
ritualistic service in connection with any such society, order, 869  
or association; 870

(k) Casual labor not in the course of an employer's trade 871  
or business; incidental service performed by an officer, 872  
appraiser, or member of a finance committee of a bank, building 873  
and loan association, savings and loan association, or savings 874  
association when the remuneration for such incidental service 875  
exclusive of the amount paid or allotted for directors' fees 876  
does not exceed sixty dollars per calendar quarter is casual 877  
labor; 878

(l) Service performed in the employ of a voluntary 879  
employees' beneficial association providing for the payment of 880  
life, sickness, accident, or other benefits to the members of 881  
such association or their dependents or their designated 882  
beneficiaries, if admission to a membership in such association 883  
is limited to individuals who are officers or employees of a 884  
municipal or public corporation, of a political subdivision of 885  
the state, or of the United States and no part of the net 886

earnings of such association inures, other than through such 887  
payments, to the benefit of any private shareholder or 888  
individual; 889

(m) Service performed by an individual in the employ of a 890  
foreign government, including service as a consular or other 891  
officer or employee or of a nondiplomatic representative; 892

(n) Service performed in the employ of an instrumentality 893  
wholly owned by a foreign government if the service is of a 894  
character similar to that performed in foreign countries by 895  
employees of the United States or of an instrumentality thereof 896  
and if the director finds that the secretary of state of the 897  
United States has certified to the secretary of the treasury of 898  
the United States that the foreign government, with respect to 899  
whose instrumentality exemption is claimed, grants an equivalent 900  
exemption with respect to similar service performed in the 901  
foreign country by employees of the United States and of 902  
instrumentalities thereof; 903

(o) Service with respect to which unemployment 904  
compensation is payable under an unemployment compensation 905  
system established by an act of congress; 906

(p) Service performed as a student nurse in the employ of 907  
a hospital or a nurses' training school by an individual who is 908  
enrolled and is regularly attending classes in a nurses' 909  
training school chartered or approved pursuant to state law, and 910  
service performed as an intern in the employ of a hospital by an 911  
individual who has completed a four years' course in a medical 912  
school chartered or approved pursuant to state law; 913

(q) Service performed by an individual under the age of 914  
eighteen in the delivery or distribution of newspapers or 915



shopping news, not including delivery or distribution to any 916  
point for subsequent delivery or distribution; 917

(r) Service performed in the employ of the United States 918  
or an instrumentality of the United States immune under the 919  
Constitution of the United States from the contributions imposed 920  
by this chapter, except that to the extent that congress permits 921  
states to require any instrumentalities of the United States to 922  
make payments into an unemployment fund under a state 923  
unemployment compensation act, this chapter shall be applicable 924  
to such instrumentalities and to services performed for such 925  
instrumentalities in the same manner, to the same extent, and on 926  
the same terms as to all other employers, individuals, and 927  
services, provided that if this state is not certified for any 928  
year by the proper agency of the United States under section 929  
3304 of the "Internal Revenue Code of 1954," the payments 930  
required of such instrumentalities with respect to such year 931  
shall be refunded by the director from the fund in the same 932  
manner and within the same period as is provided in division (E) 933  
of section 4141.09 of the Revised Code with respect to 934  
contributions erroneously collected; 935

(s) Service performed by an individual as a member of a 936  
band or orchestra, provided such service does not represent the 937  
principal occupation of such individual, and which service is 938  
not subject to or required to be covered for full tax credit 939  
against the tax imposed by the "Federal Unemployment Tax Act," 940  
53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311. 941

(t) Service performed in the employ of a day camp whose 942  
camping season does not exceed twelve weeks in any calendar 943  
year, and which service is not subject to the "Federal 944  
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 945

3311. Service performed after December 31, 1971:	946
(i) In the employ of a hospital, if the service is	947
performed by a patient of the hospital, as defined in division	948
(W) of this section;	949
(ii) For a prison or other correctional institution by an	950
inmate of the prison or correctional institution;	951
(iii) Service performed after December 31, 1977, by an	952
inmate of a custodial institution operated by the state, a	953
political subdivision, or a nonprofit organization.	954
(u) Service that is performed by a nonresident alien	955
individual for the period the individual temporarily is present	956
in the United States as a nonimmigrant under division (F), (J),	957
(M), or (Q) of section 101(a)(15) of the "Immigration and	958
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101, as amended,	959
that is excluded under section 3306(c)(19) of the "Federal	960
Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to	961
3311.	962
(v) Notwithstanding any other provisions of division (B)	963
(3) of this section, services that are excluded under divisions	964
(B)(3)(g), (j), (k), and (l) of this section shall not be	965
excluded from employment when performed for a nonprofit	966
organization, as defined in division (X) of this section, or for	967
this state or its instrumentalities, or for a political	968
subdivision or its instrumentalities or for Indian tribes;	969
(w) Service that is performed by an individual working as	970
an election official or election worker if the amount of	971
remuneration received by the individual during the calendar year	972
for services as an election official or election worker is less	973
than one thousand dollars;	974

(x) Service performed for an elementary or secondary school that is operated primarily for religious purposes, that is described in subsection 501(c) (3) and exempt from federal income taxation under subsection 501(a) of the Internal Revenue Code, 26 U.S.C.A. 501;	975 976 977 978 979
(y) Service performed by a person committed to a penal institution.	980 981
(z) Service performed for an Indian tribe as described in division (B) (2) (1) of this section when performed in any of the following manners:	982 983 984
(i) As a publicly elected official;	985
(ii) As a member of an Indian tribal council;	986
(iii) As a member of a legislative or judiciary body;	987
(iv) In a position which, pursuant to Indian tribal law, is designated as a major nontenured policymaking or advisory position, or a policymaking or advisory position where the performance of the duties ordinarily does not require more than eight hours of time per week;	988 989 990 991 992
(v) As an employee serving on a temporary basis in the case of a fire, storm, snow, earthquake, flood, or similar emergency.	993 994 995
(aa) Service performed after December 31, 1971, for a nonprofit organization, this state or its instrumentalities, a political subdivision or its instrumentalities, or an Indian tribe as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision, thereof, by an individual receiving the work-relief or work-	996 997 998 999 1000 1001 1002

training. 1003

(bb) Participation in a learn to earn program as defined 1004  
in section 4141.293 of the Revised Code. 1005

(4) If the services performed during one half or more of 1006  
any pay period by an employee for the person employing that 1007  
employee constitute employment, all the services of such 1008  
employee for such period shall be deemed to be employment; but 1009  
if the services performed during more than one half of any such 1010  
pay period by an employee for the person employing that employee 1011  
do not constitute employment, then none of the services of such 1012  
employee for such period shall be deemed to be employment. As 1013  
used in division (B) (4) of this section, "pay period" means a 1014  
period, of not more than thirty-one consecutive days, for which 1015  
payment of remuneration is ordinarily made to the employee by 1016  
the person employing that employee. Division (B) (4) of this 1017  
section does not apply to services performed in a pay period by 1018  
an employee for the person employing that employee, if any of 1019  
such service is excepted by division (B) (3) (o) of this section. 1020

(C) "Benefits" means money payments payable to an 1021  
individual who has established benefit rights, as provided in 1022  
this chapter, for loss of remuneration due to the individual's 1023  
unemployment. 1024

(D) "Benefit rights" means the weekly benefit amount and 1025  
the maximum benefit amount that may become payable to an 1026  
individual within the individual's benefit year as determined by 1027  
the director. 1028

(E) "Claim for benefits" means a claim for waiting period 1029  
or benefits for a designated week. 1030

(F) "Additional claim" means the first claim for benefits 1031

filed following any separation from employment during a benefit 1032  
year; "continued claim" means any claim other than the first 1033  
claim for benefits and other than an additional claim. 1034

(G) (1) "Wages" means remuneration paid to an employee by 1035  
each of the employee's employers with respect to employment; 1036  
except that wages shall not include that part of remuneration 1037  
paid during any calendar year to an individual by an employer or 1038  
such employer's predecessor in interest in the same business or 1039  
enterprise, which in any calendar year is in excess of eight 1040  
thousand two hundred fifty dollars on and after January 1, 1992; 1041  
eight thousand five hundred dollars on and after January 1, 1042  
1993; eight thousand seven hundred fifty dollars on and after 1043  
January 1, 1994; and nine thousand dollars on and after January 1044  
1, 1995. Remuneration in excess of such amounts shall be deemed 1045  
wages subject to contribution to the same extent that such 1046  
remuneration is defined as wages under the "Federal Unemployment 1047  
Tax Act," 84 Stat. 714 (1970), 26 U.S.C.A. 3301 to 3311, as 1048  
amended. The remuneration paid an employee by an employer with 1049  
respect to employment in another state, upon which contributions 1050  
were required and paid by such employer under the unemployment 1051  
compensation act of such other state, shall be included as a 1052  
part of remuneration in computing the amount specified in this 1053  
division. 1054

(2) Notwithstanding division (G) (1) of this section, if, 1055  
as of the computation date for any calendar year, the director 1056  
determines that the level of the unemployment compensation fund 1057  
is sixty per cent or more below the minimum safe level as 1058  
defined in section 4141.25 of the Revised Code, then, effective 1059  
the first day of January of the following calendar year, wages 1060  
subject to this chapter shall not include that part of 1061  
remuneration paid during any calendar year to an individual by 1062

an employer or such employer's predecessor in interest in the 1063  
same business or enterprise which is in excess of nine thousand 1064  
dollars. The increase in the dollar amount of wages subject to 1065  
this chapter under this division shall remain in effect from the 1066  
date of the director's determination pursuant to division (G) (2) 1067  
of this section and thereafter notwithstanding the fact that the 1068  
level in the fund may subsequently become less than sixty per 1069  
cent below the minimum safe level. 1070

(H) (1) "Remuneration" means all compensation for personal 1071  
services, including commissions and bonuses and the cash value 1072  
of all compensation in any medium other than cash, except that 1073  
in the case of agricultural or domestic service, "remuneration" 1074  
includes only cash remuneration. Gratuities customarily received 1075  
by an individual in the course of the individual's employment 1076  
from persons other than the individual's employer and which are 1077  
accounted for by such individual to the individual's employer 1078  
are taxable wages. 1079

The reasonable cash value of compensation paid in any 1080  
medium other than cash shall be estimated and determined in 1081  
accordance with rules prescribed by the director, provided that 1082  
"remuneration" does not include: 1083

(a) Payments as provided in divisions (b) (2) to (b) (20) of 1084  
section 3306 of the "Federal Unemployment Tax Act," 84 Stat. 1085  
713, 26 U.S.C.A. 3301 to 3311, as amended; 1086

(b) The payment by an employer, without deduction from the 1087  
remuneration of the individual in the employer's employ, of the 1088  
tax imposed upon an individual in the employer's employ under 1089  
section 3101 of the "Internal Revenue Code of 1954," with 1090  
respect to services performed after October 1, 1941. 1091

(2) "Cash remuneration" means all remuneration paid in 1092  
cash, including commissions and bonuses, but not including the 1093  
cash value of all compensation in any medium other than cash. 1094

(I) "Interested party" means the director and any party to 1095  
whom notice of a determination of an application for benefit 1096  
rights or a claim for benefits is required to be given under 1097  
section 4141.28 of the Revised Code. 1098

(J) "Annual payroll" means the total amount of wages 1099  
subject to contributions during a twelve-month period ending 1100  
with the last day of the second calendar quarter of any calendar 1101  
year. 1102

(K) "Average annual payroll" means the average of the last 1103  
three annual payrolls of an employer, provided that if, as of 1104  
any computation date, the employer has had less than three 1105  
annual payrolls in such three-year period, such average shall be 1106  
based on the annual payrolls which the employer has had as of 1107  
such date. 1108

(L) (1) "Contributions" means the money payments to the 1109  
state unemployment compensation fund required of employers by 1110  
section 4141.25 of the Revised Code and of the state and any of 1111  
its political subdivisions electing to pay contributions under 1112  
section 4141.242 of the Revised Code. Employers paying 1113  
contributions shall be described as "contributory employers." 1114

(2) "Payments in lieu of contributions" means the money 1115  
payments to the state unemployment compensation fund required of 1116  
reimbursing employers under sections 4141.241 and 4141.242 of 1117  
the Revised Code. 1118

(M) An individual is "totally unemployed" in any week 1119  
during which the individual performs no services and with 1120

respect to such week no remuneration is payable to the 1121  
individual. 1122

(N) An individual is "partially unemployed" in any week 1123  
if, due to involuntary loss of work, the total remuneration 1124  
payable to the individual for such week is less than the 1125  
individual's weekly benefit amount. 1126

(O) "Week" means the calendar week ending at midnight 1127  
Saturday unless an equivalent week of seven consecutive calendar 1128  
days is prescribed by the director. 1129

(1) "Qualifying week" means any calendar week in an 1130  
individual's base period with respect to which the individual 1131  
earns or is paid remuneration in employment subject to this 1132  
chapter. A calendar week with respect to which an individual 1133  
earns remuneration but for which payment was not made within the 1134  
base period, when necessary to qualify for benefit rights, may 1135  
be considered to be a qualifying week. The number of qualifying 1136  
weeks which may be established in a calendar quarter shall not 1137  
exceed the number of calendar weeks in the quarter. 1138

(2) "Average weekly wage" means the amount obtained by 1139  
dividing an individual's total remuneration for all qualifying 1140  
weeks during the base period by the number of such qualifying 1141  
weeks, provided that if the computation results in an amount 1142  
that is not a multiple of one dollar, such amount shall be 1143  
rounded to the next lower multiple of one dollar. 1144

(P) "Weekly benefit amount" means the amount of benefits 1145  
an individual would be entitled to receive for one week of total 1146  
unemployment. 1147

(Q) (1) "Base period" means the first four of the last five 1148  
completed calendar quarters immediately preceding the first day 1149



of an individual's benefit year, except as provided in division 1150  
(Q) (2) of this section. 1151

(2) If an individual does not have sufficient qualifying 1152  
weeks and wages in the base period to qualify for benefit 1153  
rights, the individual's base period shall be the four most 1154  
recently completed calendar quarters preceding the first day of 1155  
the individual's benefit year. Such base period shall be known 1156  
as the "alternate base period." If information as to weeks and 1157  
wages for the most recent quarter of the alternate base period 1158  
is not available to the director from the regular quarterly 1159  
reports of wage information, which are systematically 1160  
accessible, the director may, consistent with the provisions of 1161  
section 4141.28 of the Revised Code, base the determination of 1162  
eligibility for benefits on the affidavit of the claimant with 1163  
respect to weeks and wages for that calendar quarter. The 1164  
claimant shall furnish payroll documentation, where available, 1165  
in support of the affidavit. The determination based upon the 1166  
alternate base period as it relates to the claimant's benefit 1167  
rights, shall be amended when the quarterly report of wage 1168  
information from the employer is timely received and that 1169  
information causes a change in the determination. As provided in 1170  
division (B) of section 4141.28 of the Revised Code, any 1171  
benefits paid and charged to an employer's account, based upon a 1172  
claimant's affidavit, shall be adjusted effective as of the 1173  
beginning of the claimant's benefit year. No calendar quarter in 1174  
a base period or alternate base period shall be used to 1175  
establish a subsequent benefit year. 1176

(3) The "base period" of a combined wage claim, as 1177  
described in division (H) of section 4141.43 of the Revised 1178  
Code, shall be the base period prescribed by the law of the 1179  
state in which the claim is allowed. 1180

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

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

since the beginning of the individual's previous benefit year to 1212  
file a valid application, "employment" means the performance of 1213  
services for which remuneration is payable. 1214

(2) Effective for benefit years beginning on and after 1215  
December 26, 2004, any application for determination of benefit 1216  
rights made in accordance with section 4141.28 of the Revised 1217  
Code is valid if the individual satisfies the criteria described 1218  
in division (R) (1) of this section, and if the reason for the 1219  
individual's separation from employment is not disqualifying 1220  
pursuant to division (D) (2) of section 4141.29 or section 1221  
4141.291 of the Revised Code. A disqualification imposed 1222  
pursuant to division (D) (2) of section 4141.29 or section 1223  
4141.291 of the Revised Code must be removed as provided in 1224  
those sections as a requirement of establishing a valid 1225  
application for benefit years beginning on and after December 1226  
26, 2004. 1227

(3) The statewide average weekly wage shall be calculated 1228  
by the director once a year based on the twelve-month period 1229  
ending the thirtieth day of June, as set forth in division (B) 1230  
(3) of section 4141.30 of the Revised Code, rounded down to the 1231  
nearest dollar. Increases or decreases in the amount of 1232  
remuneration required to have been earned or paid in order for 1233  
individuals to have filed valid applications shall become 1234  
effective on Sunday of the calendar week in which the first day 1235  
of January occurs that follows the twelve-month period ending 1236  
the thirtieth day of June upon which the calculation of the 1237  
statewide average weekly wage was based. 1238

(4) As used in this division, an individual is 1239  
"unemployed" if, with respect to the calendar week in which such 1240  
application is filed, the individual is "partially unemployed" 1241

or "totally unemployed" as defined in this section or if, prior 1242  
to filing the application, the individual was separated from the 1243  
individual's most recent work for any reason which terminated 1244  
the individual's employee-employer relationship, or was laid off 1245  
indefinitely or for a definite period of seven or more days. 1246

(S) "Calendar quarter" means the period of three 1247  
consecutive calendar months ending on the thirty-first day of 1248  
March, the thirtieth day of June, the thirtieth day of 1249  
September, and the thirty-first day of December, or the 1250  
equivalent thereof as the director prescribes by rule. 1251

(T) "Computation date" means the first day of the third 1252  
calendar quarter of any calendar year. 1253

(U) "Contribution period" means the calendar year 1254  
beginning on the first day of January of any year. 1255

(V) "Agricultural labor," for the purpose of this 1256  
division, means any service performed prior to January 1, 1972, 1257  
which was agricultural labor as defined in this division prior 1258  
to that date, and service performed after December 31, 1971: 1259

(1) On a farm, in the employ of any person, in connection 1260  
with cultivating the soil, or in connection with raising or 1261  
harvesting any agricultural or horticultural commodity, 1262  
including the raising, shearing, feeding, caring for, training, 1263  
and management of livestock, bees, poultry, and fur-bearing 1264  
animals and wildlife; 1265

(2) In the employ of the owner or tenant or other operator 1266  
of a farm in connection with the operation, management, 1267  
conservation, improvement, or maintenance of such farm and its 1268  
tools and equipment, or in salvaging timber or clearing land of 1269  
brush and other debris left by hurricane, if the major part of 1270

such service is performed on a farm; 1271

(3) In connection with the production or harvesting of any 1272  
commodity defined as an agricultural commodity in section 15 (g) 1273  
of the "Agricultural Marketing Act," 46 Stat. 1550 (1931), 12 1274  
U.S.C. 1141j, as amended, or in connection with the ginning of 1275  
cotton, or in connection with the operation or maintenance of 1276  
ditches, canals, reservoirs, or waterways, not owned or operated 1277  
for profit, used exclusively for supplying and storing water for 1278  
farming purposes; 1279

(4) In the employ of the operator of a farm in handling, 1280  
planting, drying, packing, packaging, processing, freezing, 1281  
grading, storing, or delivering to storage or to market or to a 1282  
carrier for transportation to market, in its unmanufactured 1283  
state, any agricultural or horticultural commodity, but only if 1284  
the operator produced more than one half of the commodity with 1285  
respect to which such service is performed; 1286

(5) In the employ of a group of operators of farms, or a 1287  
cooperative organization of which the operators are members, in 1288  
the performance of service described in division (V) (4) of this 1289  
section, but only if the operators produced more than one-half 1290  
of the commodity with respect to which the service is performed; 1291

(6) Divisions (V) (4) and (5) of this section shall not be 1292  
deemed to be applicable with respect to service performed: 1293

(a) In connection with commercial canning or commercial 1294  
freezing or in connection with any agricultural or horticultural 1295  
commodity after its delivery to a terminal market for 1296  
distribution for consumption; or 1297

(b) On a farm operated for profit if the service is not in 1298  
the course of the employer's trade or business. 1299

As used in division (V) of this section, "farm" includes 1300  
stock, dairy, poultry, fruit, fur-bearing animal, and truck 1301  
farms, plantations, ranches, nurseries, ranges, greenhouses, or 1302  
other similar structures used primarily for the raising of 1303  
agricultural or horticultural commodities and orchards. 1304

(W) "Hospital" means an institution which has been 1305  
registered or licensed by the Ohio department of health as a 1306  
hospital. 1307

(X) "Nonprofit organization" means an organization, or 1308  
group of organizations, described in section 501(c)(3) of the 1309  
"Internal Revenue Code of 1954," and exempt from income tax 1310  
under section 501(a) of that code. 1311

(Y) "Institution of higher education" means a public or 1312  
nonprofit educational institution, including an educational 1313  
institution operated by an Indian tribe, which: 1314

(1) Admits as regular students only individuals having a 1315  
certificate of graduation from a high school, or the recognized 1316  
equivalent; 1317

(2) Is legally authorized in this state or by the Indian 1318  
tribe to provide a program of education beyond high school; and 1319

(3) Provides an educational program for which it awards a 1320  
bachelor's or higher degree, or provides a program which is 1321  
acceptable for full credit toward such a degree, a program of 1322  
post-graduate or post-doctoral studies, or a program of training 1323  
to prepare students for gainful employment in a recognized 1324  
occupation. 1325

For the purposes of this division, all colleges and 1326  
universities in this state are institutions of higher education. 1327

(Z) For the purposes of this chapter, "states" includes 1328  
the District of Columbia, the Commonwealth of Puerto Rico, and 1329  
the Virgin Islands. 1330

(AA) "Alien" means, for the purposes of division (A) (1) (d) 1331  
of this section, an individual who is an alien admitted to the 1332  
United States to perform service in agricultural labor pursuant 1333  
to sections 214 (c) and 101 (a) (15) (H) of the "Immigration and 1334  
Nationality Act," 66 Stat. 163, 8 U.S.C.A. 1101. 1335

(BB) (1) "Crew leader" means an individual who furnishes 1336  
individuals to perform agricultural labor for any other employer 1337  
or farm operator, and: 1338

(a) Pays, either on the individual's own behalf or on 1339  
behalf of the other employer or farm operator, the individuals 1340  
so furnished by the individual for the service in agricultural 1341  
labor performed by them; 1342

(b) Has not entered into a written agreement with the 1343  
other employer or farm operator under which the agricultural 1344  
worker is designated as in the employ of the other employer or 1345  
farm operator. 1346

(2) For the purposes of this chapter, any individual who 1347  
is a member of a crew furnished by a crew leader to perform 1348  
service in agricultural labor for any other employer or farm 1349  
operator shall be treated as an employee of the crew leader if: 1350

(a) The crew leader holds a valid certificate of 1351  
registration under the "Farm Labor Contractor Registration Act 1352  
of 1963," 90 Stat. 2668, 7 U.S.C. 2041; or 1353

(b) Substantially all the members of the crew operate or 1354  
maintain tractors, mechanized harvesting or crop-dusting 1355  
equipment, or any other mechanized equipment, which is provided 1356

by the crew leader; and 1357

(c) If the individual is not in the employment of the 1358  
other employer or farm operator within the meaning of division 1359  
(B) (1) of this section. 1360

(3) For the purposes of this division, any individual who 1361  
is furnished by a crew leader to perform service in agricultural 1362  
labor for any other employer or farm operator and who is not 1363  
treated as in the employment of the crew leader under division 1364  
(BB) (2) of this section shall be treated as the employee of the 1365  
other employer or farm operator and not of the crew leader. The 1366  
other employer or farm operator shall be treated as having paid 1367  
cash remuneration to the individual in an amount equal to the 1368  
amount of cash remuneration paid to the individual by the crew 1369  
leader, either on the crew leader's own behalf or on behalf of 1370  
the other employer or farm operator, for the service in 1371  
agricultural labor performed for the other employer or farm 1372  
operator. 1373

(CC) "Educational institution" means an institution other 1374  
than an institution of higher education as defined in division 1375  
(Y) of this section, including an educational institution 1376  
operated by an Indian tribe, which: 1377

(1) Offers participants, trainees, or students an 1378  
organized course of study or training designed to transfer to 1379  
them knowledge, skills, information, doctrines, attitudes, or 1380  
abilities from, by, or under the guidance of an instructor or 1381  
teacher; and 1382

(2) Is approved, chartered, or issued a permit to operate 1383  
as a school by the state board of education, other government 1384  
agency, or Indian tribe that is authorized within the state to 1385



approve, charter, or issue a permit for the operation of a 1386  
school. 1387

For the purposes of this division, the courses of study or 1388  
training which the institution offers may be academic, 1389  
technical, trade, or preparation for gainful employment in a 1390  
recognized occupation. 1391

(DD) "Cost savings day" means any unpaid day off from work 1392  
in which employees continue to accrue employee benefits which 1393  
have a determinable value including, but not limited to, 1394  
vacation, pension contribution, sick time, and life and health 1395  
insurance. 1396

(EE) "Employee" means every person who is an employee 1397  
under the rules adopted by the administrator of workers' 1398  
compensation pursuant to section 4175.01 of the Revised Code, 1399  
unless the services performed by the individual do not 1400  
constitute "employment" as defined in division (B) of this 1401  
section. 1402

Sec. 4175.01. The administrator of workers' compensation 1403  
shall adopt rules to establish a test to determine whether an 1404  
individual is an employee or independent contractor for purposes 1405  
of Chapters 4121., 4123., 4141., and 5747. of the Revised Code, 1406  
consistent with the common law rules for determining an 1407  
employer-employee relationship used by the United States 1408  
internal revenue service pursuant to section 3121(d)(2) of the 1409  
"Internal Revenue Code of 1986," 26 U.S.C. 3121(d)(2), as 1410  
amended. 1411

Sec. 4175.02. No employer shall negligently fail to 1412  
consider an individual who is an employee under the rules 1413  
adopted by the administrator of workers' compensation pursuant 1414

to section 4175.01 of the Revised Code to be an employee for 1415  
purposes of Chapter 4121., 4123., 4141., or 5747. of the Revised 1416  
Code. 1417

**Sec. 4175.03.** The administrator of workers' compensation 1418  
shall enforce this chapter. The administrator shall adopt 1419  
reasonable rules in accordance with Chapter 119. of the Revised 1420  
Code to implement and administer this chapter, including rules 1421  
to establish an expedited hearing process for an employer 1422  
against whom a stop work order is issued under section 4175.061 1423  
of the Revised Code. 1424

**Sec. 4175.04.** (A) An individual may file a complaint with 1425  
the administrator of workers' compensation against an employer 1426  
if the individual reasonably believes that the employer is in 1427  
violation of section 4175.02 of the Revised Code. Upon receipt 1428  
of a complaint, the administrator shall conduct an investigation 1429  
into whether the employer violated section 4175.02 of the 1430  
Revised Code. 1431

(B) The administrator may do all of the following in 1432  
investigating a complaint made pursuant to division (A) of this 1433  
section: 1434

(1) Enter and inspect, at all reasonable times, all of the 1435  
offices and job sites maintained by the employer who is the 1436  
subject of the complaint; 1437

(2) Examine and copy business records; 1438

(3) Compel, by subpoena, the attendance and testimony of 1439  
witnesses and the production of books, payroll, records, papers, 1440  
and other evidence; 1441

(4) Administer oaths to witnesses. 1442

Sec. 4175.05. (A) If, after an investigation pursuant to 1443  
section 4175.04 of the Revised Code, the administrator of 1444  
workers' compensation determines that reasonable evidence exists 1445  
that an employer has violated section 4175.02 of the Revised 1446  
Code, the administrator shall do both of the following: 1447

(1) Within seventy-two hours after that determination, 1448  
issue a stop work order against the employer pursuant to section 1449  
4175.061 of the Revised Code. 1450

(2) Within seven days after that determination, send a 1451  
written notice to the employer in the same manner as prescribed 1452  
in section 119.07 of the Revised Code for licensees, except that 1453  
the notice shall specify that a hearing will be held in 1454  
accordance with division (B) of this section and shall specify 1455  
the date, time, and place of the hearing. 1456

(B) The administrator shall hold a hearing regarding the 1457  
alleged violation in the same manner prescribed for an 1458  
adjudication hearing under section 119.09 of the Revised Code. 1459  
If the administrator, after the hearing, determines a violation 1460  
has occurred, the administrator shall discipline the employer in 1461  
accordance with section 4175.06 of the Revised Code. The 1462  
administrator's determination is an order that the employer may 1463  
appeal in accordance with section 119.12 of the Revised Code. 1464  
The stop work order issued pursuant to section 4175.061 of the 1465  
Revised Code shall not be subject to suspension by the court 1466  
during the pendency of any appeal filed under section 119.12 of 1467  
the Revised Code. If an employer who allegedly violated section 1468  
4175.02 of the Revised Code fails to appear for a hearing, the 1469  
administrator may make the determination without the employer's 1470  
appearance or request the court of common pleas of the county 1471  
where the alleged violation occurred to compel the person to 1472

appear before the administrator for a hearing. 1473

The administrator's determination that an employer has 1474  
misclassified an employee as an independent contractor is 1475  
binding on the director of job and family services and the tax 1476  
commissioner unless the individual is otherwise not considered 1477  
an employee under the applicable law. Notwithstanding any 1478  
provision of this section to the contrary, nothing in this 1479  
chapter shall be construed to limit or otherwise constrain the 1480  
duties and powers of the administrator under Chapters 4121., 1481  
4123., 4127., and 4131. of the Revised Code, the director under 1482  
Chapter 4141. of the Revised Code, or the tax commissioner under 1483  
Chapter 5703. or 5747. of the Revised Code. 1484

**Sec. 4175.06.** (A) If, after a hearing held in accordance 1485  
with section 4175.05 of the Revised Code, the administrator of 1486  
workers' compensation determines that an employer violated 1487  
section 4175.02 of the Revised Code, the administrator shall do 1488  
all of the following: 1489

(1) Notify the director of job and family services and the 1490  
tax commissioner, each of whom shall determine whether the 1491  
employer's violation of section 4175.02 of the Revised Code 1492  
results in the employer not complying with the requirements of 1493  
Chapter 4141. or 5747. of the Revised Code, as applicable; 1494

(2) Continue to enforce the stop work order issued against 1495  
the employer pursuant to section 4175.061 of the Revised Code; 1496

(3) Assess against the employer a penalty of five thousand 1497  
dollars for each employee the employer misclassified as an 1498  
independent contractor in violation of section 4175.02 of the 1499  
Revised Code. 1500

(B) With respect to a fine assessed under division (A) (3) 1501

of this section, the administrator may assess an additional 1502  
amount against an employer who has previously violated section 1503  
4175.02 of the Revised Code. 1504

**Sec. 4175.061.** (A) The administrator of workers' 1505  
compensation shall issue a stop work order, requiring the 1506  
cessation of all business operations, against an employer if, 1507  
after an investigation pursuant to section 4175.04 of the 1508  
Revised Code, the administrator determines that reasonable 1509  
evidence exists that the employer violated section 4175.02 of 1510  
the Revised Code. 1511

(B) (1) A stop work order issued under this section shall 1512  
take effect for all worksites in the state for which the 1513  
administrator determined that reasonable evidence exists that 1514  
the employer is in violation of section 4175.02 of the Revised 1515  
Code when the stop work order is served upon the employer. 1516

(2) If the administrator determined that reasonable 1517  
evidence exists that the employer is in violation of section 1518  
4175.02 of the Revised Code at only one worksite of the 1519  
employer, the administrator may serve a stop work order on the 1520  
particular worksite by posting a copy of the stop work order in 1521  
a conspicuous location at the worksite. The stop work order 1522  
shall take effect for the particular worksite upon service at 1523  
the worksite. 1524

(C) A stop work order issued under this section shall 1525  
remain in effect until the administrator issues an order 1526  
releasing the stop work order. The administrator shall issue the 1527  
order of release upon either of the following events: 1528

(1) The administrator determines that the employer did not 1529  
violate section 4175.02 of the Revised Code after a hearing held 1530

in accordance with section 4175.05 of the Revised Code; 1531

(2) If the administrator determined that the employer did 1532  
violate section 4175.02 of the Revised Code after a hearing held 1533  
in accordance with section 4175.05 of the Revised Code, the 1534  
administrator determines that the employer is no longer in 1535  
violation of section 4175.02 of the Revised Code and has paid 1536  
any penalty assessed under this chapter. 1537

(D) (1) The administrator may issue an order of conditional 1538  
release from a stop work order to an employer upon a finding 1539  
that the employer is no longer in violation of section 4175.02 1540  
of the Revised Code and has agreed to remit periodic payments of 1541  
any penalty assessed under this chapter pursuant to a payment 1542  
agreement schedule with the administrator. A payment agreement 1543  
schedule entered into under this division shall require an 1544  
initial payment of at least one thousand dollars. 1545

(2) If the administrator issues an order of conditional 1546  
release, and if the employer fails to meet any term or condition 1547  
of the penalty payment agreement, the administrator shall 1548  
immediately reinstate the stop work order and the entire unpaid 1549  
balance of the penalty shall immediately become due. 1550

(E) The administrator may require an employer, as a 1551  
condition of release from a stop work order, to file periodic 1552  
reports with the administrator to demonstrate the employer's 1553  
continued compliance with section 4175.02 of the Revised Code 1554  
for a probationary period that shall not exceed two years from 1555  
the date the administrator issues the order of release. 1556

(F) The administrator shall assess a penalty of five 1557  
thousand dollars against an employer for each day that the 1558  
employer conducts business operations in violation of a stop 1559

work order issued under this section. 1560

(G) A stop work order or penalty issued under this section 1561  
against an employer shall be in effect against any successor 1562  
corporation or business entity that has one or more of the same 1563  
principals or officers as the employer against whom the stop 1564  
work order was issued and is engaged in the same or similar 1565  
trade or activity as the employer against whom the stop work 1566  
order was issued. 1567

(H) A stop work order issued under this section shall be 1568  
limited to the work of the employer for whom the administrator 1569  
determined reasonable evidence exists that the employer is in 1570  
violation of section 4175.02 of the Revised Code and shall not 1571  
be construed to require any work performed by a person other 1572  
than the employer or employees of the employer to cease. 1573

**Sec. 4175.07.** There is hereby created in the state 1574  
treasury the employee classification fund. The administrator of 1575  
workers' compensation shall deposit all moneys the administrator 1576  
receives under this chapter into the fund. The administrator 1577  
shall use the fund for the administration, investigation, and 1578  
other expenses incurred in carrying out the administrator's 1579  
powers and duties under this chapter. 1580

**Sec. 4175.99.** Whoever violates section 4175.02 of the 1581  
Revised Code within five years after the date the director 1582  
assesses a civil penalty pursuant to section 4175.05 of the 1583  
Revised Code or five years after the date the employer was 1584  
convicted of or pleaded guilty to a violation of that section is 1585  
guilty of the following: 1586

(A) If the amount the employer is liable for due to the 1587  
violation is less than twenty thousand dollars, a felony of the 1588

third degree. 1589

(B) If the amount the employer is liable for due to the 1590  
violation is twenty thousand dollars or more, but less than one 1591  
hundred thousand dollars, a felony of the second degree. 1592

(C) If the amount is one hundred thousand dollars or more, 1593  
a felony of the first degree. 1594

**Sec. 5747.01.** Except as otherwise expressly provided or 1595  
clearly appearing from the context, any term used in this 1596  
chapter that is not otherwise defined in this section has the 1597  
same meaning as when used in a comparable context in the laws of 1598  
the United States relating to federal income taxes or if not 1599  
used in a comparable context in those laws, has the same meaning 1600  
as in section 5733.40 of the Revised Code. Any reference in this 1601  
chapter to the Internal Revenue Code includes other laws of the 1602  
United States relating to federal income taxes. 1603

As used in this chapter: 1604

(A) "Adjusted gross income" or "Ohio adjusted gross 1605  
income" means federal adjusted gross income, as defined and used 1606  
in the Internal Revenue Code, adjusted as provided in this 1607  
section: 1608

(1) Add interest or dividends on obligations or securities 1609  
of any state or of any political subdivision or authority of any 1610  
state, other than this state and its subdivisions and 1611  
authorities. 1612

(2) Add interest or dividends on obligations of any 1613  
authority, commission, instrumentality, territory, or possession 1614  
of the United States to the extent that the interest or 1615  
dividends are exempt from federal income taxes but not from 1616  
state income taxes. 1617



(3) Deduct interest or dividends on obligations of the 1618  
United States and its territories and possessions or of any 1619  
authority, commission, or instrumentality of the United States 1620  
to the extent that the interest or dividends are included in 1621  
federal adjusted gross income but exempt from state income taxes 1622  
under the laws of the United States. 1623

(4) Deduct disability and survivor's benefits to the 1624  
extent included in federal adjusted gross income. 1625

(5) Deduct benefits under Title II of the Social Security 1626  
Act and tier 1 railroad retirement benefits to the extent 1627  
included in federal adjusted gross income under section 86 of 1628  
the Internal Revenue Code. 1629

(6) In the case of a taxpayer who is a beneficiary of a 1630  
trust that makes an accumulation distribution as defined in 1631  
section 665 of the Internal Revenue Code, add, for the 1632  
beneficiary's taxable years beginning before 2002, the portion, 1633  
if any, of such distribution that does not exceed the 1634  
undistributed net income of the trust for the three taxable 1635  
years preceding the taxable year in which the distribution is 1636  
made to the extent that the portion was not included in the 1637  
trust's taxable income for any of the trust's taxable years 1638  
beginning in 2002 or thereafter. "Undistributed net income of a 1639  
trust" means the taxable income of the trust increased by (a) (i) 1640  
the additions to adjusted gross income required under division 1641  
(A) of this section and (ii) the personal exemptions allowed to 1642  
the trust pursuant to section 642(b) of the Internal Revenue 1643  
Code, and decreased by (b) (i) the deductions to adjusted gross 1644  
income required under division (A) of this section, (ii) the 1645  
amount of federal income taxes attributable to such income, and 1646  
(iii) the amount of taxable income that has been included in the 1647

adjusted gross income of a beneficiary by reason of a prior 1648  
accumulation distribution. Any undistributed net income included 1649  
in the adjusted gross income of a beneficiary shall reduce the 1650  
undistributed net income of the trust commencing with the 1651  
earliest years of the accumulation period. 1652

(7) Deduct the amount of wages and salaries, if any, not 1653  
otherwise allowable as a deduction but that would have been 1654  
allowable as a deduction in computing federal adjusted gross 1655  
income for the taxable year, had the targeted jobs credit 1656  
allowed and determined under sections 38, 51, and 52 of the 1657  
Internal Revenue Code not been in effect. 1658

(8) Deduct any interest or interest equivalent on public 1659  
obligations and purchase obligations to the extent that the 1660  
interest or interest equivalent is included in federal adjusted 1661  
gross income. 1662

(9) Add any loss or deduct any gain resulting from the 1663  
sale, exchange, or other disposition of public obligations to 1664  
the extent that the loss has been deducted or the gain has been 1665  
included in computing federal adjusted gross income. 1666

(10) Deduct or add amounts, as provided under section 1667  
5747.70 of the Revised Code, related to contributions to 1668  
variable college savings program accounts made or tuition units 1669  
purchased pursuant to Chapter 3334. of the Revised Code. 1670

(11) (a) Deduct, to the extent not otherwise allowable as a 1671  
deduction or exclusion in computing federal or Ohio adjusted 1672  
gross income for the taxable year, the amount the taxpayer paid 1673  
during the taxable year for medical care insurance and qualified 1674  
long-term care insurance for the taxpayer, the taxpayer's 1675  
spouse, and dependents. No deduction for medical care insurance 1676

under division (A) (11) of this section shall be allowed either 1677  
to any taxpayer who is eligible to participate in any subsidized 1678  
health plan maintained by any employer of the taxpayer or of the 1679  
taxpayer's spouse, or to any taxpayer who is entitled to, or on 1680  
application would be entitled to, benefits under part A of Title 1681  
XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 1682  
U.S.C. 301, as amended. For the purposes of division (A) (11) (a) 1683  
of this section, "subsidized health plan" means a health plan 1684  
for which the employer pays any portion of the plan's cost. The 1685  
deduction allowed under division (A) (11) (a) of this section 1686  
shall be the net of any related premium refunds, related premium 1687  
reimbursements, or related insurance premium dividends received 1688  
during the taxable year. 1689

(b) Deduct, to the extent not otherwise deducted or 1690  
excluded in computing federal or Ohio adjusted gross income 1691  
during the taxable year, the amount the taxpayer paid during the 1692  
taxable year, not compensated for by any insurance or otherwise, 1693  
for medical care of the taxpayer, the taxpayer's spouse, and 1694  
dependents, to the extent the expenses exceed seven and one-half 1695  
per cent of the taxpayer's federal adjusted gross income. 1696

(c) Deduct, to the extent not otherwise deducted or 1697  
excluded in computing federal or Ohio adjusted gross income, any 1698  
amount included in federal adjusted gross income under section 1699  
105 or not excluded under section 106 of the Internal Revenue 1700  
Code solely because it relates to an accident and health plan 1701  
for a person who otherwise would be a "qualifying relative" and 1702  
thus a "dependent" under section 152 of the Internal Revenue 1703  
Code but for the fact that the person fails to meet the income 1704  
and support limitations under section 152(d) (1) (B) and (C) of 1705  
the Internal Revenue Code. 1706

(d) For purposes of division (A)(11) of this section, 1707  
"medical care" has the meaning given in section 213 of the 1708  
Internal Revenue Code, subject to the special rules, 1709  
limitations, and exclusions set forth therein, and "qualified 1710  
long-term care" has the same meaning given in section 7702B(c) 1711  
of the Internal Revenue Code. Solely for purposes of divisions 1712  
(A)(11)(a) and (c) of this section, "dependent" includes a 1713  
person who otherwise would be a "qualifying relative" and thus a 1714  
"dependent" under section 152 of the Internal Revenue Code but 1715  
for the fact that the person fails to meet the income and 1716  
support limitations under section 152(d)(1)(B) and (C) of the 1717  
Internal Revenue Code. 1718

(12)(a) Deduct any amount included in federal adjusted 1719  
gross income solely because the amount represents a 1720  
reimbursement or refund of expenses that in any year the 1721  
taxpayer had deducted as an itemized deduction pursuant to 1722  
section 63 of the Internal Revenue Code and applicable United 1723  
States department of the treasury regulations. The deduction 1724  
otherwise allowed under division (A)(12)(a) of this section 1725  
shall be reduced to the extent the reimbursement is attributable 1726  
to an amount the taxpayer deducted under this section in any 1727  
taxable year. 1728

(b) Add any amount not otherwise included in Ohio adjusted 1729  
gross income for any taxable year to the extent that the amount 1730  
is attributable to the recovery during the taxable year of any 1731  
amount deducted or excluded in computing federal or Ohio 1732  
adjusted gross income in any taxable year. 1733

(13) Deduct any portion of the deduction described in 1734  
section 1341(a)(2) of the Internal Revenue Code, for repaying 1735  
previously reported income received under a claim of right, that 1736

meets both of the following requirements:	1737
(a) It is allowable for repayment of an item that was	1738
included in the taxpayer's adjusted gross income for a prior	1739
taxable year and did not qualify for a credit under division (A)	1740
or (B) of section 5747.05 of the Revised Code for that year;	1741
(b) It does not otherwise reduce the taxpayer's adjusted	1742
gross income for the current or any other taxable year.	1743
(14) Deduct an amount equal to the deposits made to, and	1744
net investment earnings of, a medical savings account during the	1745
taxable year, in accordance with section 3924.66 of the Revised	1746
Code. The deduction allowed by division (A) (14) of this section	1747
does not apply to medical savings account deposits and earnings	1748
otherwise deducted or excluded for the current or any other	1749
taxable year from the taxpayer's federal adjusted gross income.	1750
(15) (a) Add an amount equal to the funds withdrawn from a	1751
medical savings account during the taxable year, and the net	1752
investment earnings on those funds, when the funds withdrawn	1753
were used for any purpose other than to reimburse an account	1754
holder for, or to pay, eligible medical expenses, in accordance	1755
with section 3924.66 of the Revised Code;	1756
(b) Add the amounts distributed from a medical savings	1757
account under division (A) (2) of section 3924.68 of the Revised	1758
Code during the taxable year.	1759
(16) Add any amount claimed as a credit under section	1760
5747.059 or 5747.65 of the Revised Code to the extent that such	1761
amount satisfies either of the following:	1762
(a) The amount was deducted or excluded from the	1763
computation of the taxpayer's federal adjusted gross income as	1764
required to be reported for the taxpayer's taxable year under	1765

the Internal Revenue Code; 1766

(b) The amount resulted in a reduction of the taxpayer's 1767  
federal adjusted gross income as required to be reported for any 1768  
of the taxpayer's taxable years under the Internal Revenue Code. 1769

(17) Deduct the amount contributed by the taxpayer to an 1770  
individual development account program established by a county 1771  
department of job and family services pursuant to sections 1772  
329.11 to 329.14 of the Revised Code for the purpose of matching 1773  
funds deposited by program participants. On request of the tax 1774  
commissioner, the taxpayer shall provide any information that, 1775  
in the tax commissioner's opinion, is necessary to establish the 1776  
amount deducted under division (A) (17) of this section. 1777

(18) Beginning in taxable year 2001 but not for any 1778  
taxable year beginning after December 31, 2005, if the taxpayer 1779  
is married and files a joint return and the combined federal 1780  
adjusted gross income of the taxpayer and the taxpayer's spouse 1781  
for the taxable year does not exceed one hundred thousand 1782  
dollars, or if the taxpayer is single and has a federal adjusted 1783  
gross income for the taxable year not exceeding fifty thousand 1784  
dollars, deduct amounts paid during the taxable year for 1785  
qualified tuition and fees paid to an eligible institution for 1786  
the taxpayer, the taxpayer's spouse, or any dependent of the 1787  
taxpayer, who is a resident of this state and is enrolled in or 1788  
attending a program that culminates in a degree or diploma at an 1789  
eligible institution. The deduction may be claimed only to the 1790  
extent that qualified tuition and fees are not otherwise 1791  
deducted or excluded for any taxable year from federal or Ohio 1792  
adjusted gross income. The deduction may not be claimed for 1793  
educational expenses for which the taxpayer claims a credit 1794  
under section 5747.27 of the Revised Code. 1795

(19) Add any reimbursement received during the taxable 1796  
year of any amount the taxpayer deducted under division (A) (18) 1797  
of this section in any previous taxable year to the extent the 1798  
amount is not otherwise included in Ohio adjusted gross income. 1799

(20) (a) (i) Subject to divisions (A) (20) (a) (iii), (iv), and 1800  
(v) of this section, add five-sixths of the amount of 1801  
depreciation expense allowed by subsection (k) of section 168 of 1802  
the Internal Revenue Code, including the taxpayer's 1803  
proportionate or distributive share of the amount of 1804  
depreciation expense allowed by that subsection to a pass- 1805  
through entity in which the taxpayer has a direct or indirect 1806  
ownership interest. 1807

(ii) Subject to divisions (A) (20) (a) (iii), (iv), and (v) 1808  
of this section, add five-sixths of the amount of qualifying 1809  
section 179 depreciation expense, including the taxpayer's 1810  
proportionate or distributive share of the amount of qualifying 1811  
section 179 depreciation expense allowed to any pass-through 1812  
entity in which the taxpayer has a direct or indirect ownership 1813  
interest. 1814

(iii) Subject to division (A) (20) (a) (v) of this section, 1815  
for taxable years beginning in 2012 or thereafter, if the 1816  
increase in income taxes withheld by the taxpayer is equal to or 1817  
greater than ten per cent of income taxes withheld by the 1818  
taxpayer during the taxpayer's immediately preceding taxable 1819  
year, "two-thirds" shall be substituted for "five-sixths" for 1820  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1821

(iv) Subject to division (A) (20) (a) (v) of this section, 1822  
for taxable years beginning in 2012 or thereafter, a taxpayer is 1823  
not required to add an amount under division (A) (20) of this 1824  
section if the increase in income taxes withheld by the taxpayer 1825

and by any pass-through entity in which the taxpayer has a 1826  
direct or indirect ownership interest is equal to or greater 1827  
than the sum of (I) the amount of qualifying section 179 1828  
depreciation expense and (II) the amount of depreciation expense 1829  
allowed to the taxpayer by subsection (k) of section 168 of the 1830  
Internal Revenue Code, and including the taxpayer's 1831  
proportionate or distributive shares of such amounts allowed to 1832  
any such pass-through entities. 1833

(v) If a taxpayer directly or indirectly incurs a net 1834  
operating loss for the taxable year for federal income tax 1835  
purposes, to the extent such loss resulted from depreciation 1836  
expense allowed by subsection (k) of section 168 of the Internal 1837  
Revenue Code and by qualifying section 179 depreciation expense, 1838  
"the entire" shall be substituted for "five-sixths of the" for 1839  
the purpose of divisions (A) (20) (a) (i) and (ii) of this section. 1840

The tax commissioner, under procedures established by the 1841  
commissioner, may waive the add-backs related to a pass-through 1842  
entity if the taxpayer owns, directly or indirectly, less than 1843  
five per cent of the pass-through entity. 1844

(b) Nothing in division (A) (20) of this section shall be 1845  
construed to adjust or modify the adjusted basis of any asset. 1846

(c) To the extent the add-back required under division (A) 1847  
(20) (a) of this section is attributable to property generating 1848  
nonbusiness income or loss allocated under section 5747.20 of 1849  
the Revised Code, the add-back shall be situated to the same 1850  
location as the nonbusiness income or loss generated by the 1851  
property for the purpose of determining the credit under 1852  
division (A) of section 5747.05 of the Revised Code. Otherwise, 1853  
the add-back shall be apportioned, subject to one or more of the 1854  
four alternative methods of apportionment enumerated in section 1855



5747.21 of the Revised Code. 1856

(d) For the purposes of division (A) (20) (a) (v) of this 1857  
section, net operating loss carryback and carryforward shall not 1858  
include the allowance of any net operating loss deduction 1859  
carryback or carryforward to the taxable year to the extent such 1860  
loss resulted from depreciation allowed by section 168(k) of the 1861  
Internal Revenue Code and by the qualifying section 179 1862  
depreciation expense amount. 1863

(e) For the purposes of divisions (A) (20) and (21) of this 1864  
section: 1865

(i) "Income taxes withheld" means the total amount 1866  
withheld and remitted under sections 5747.06 and 5747.07 of the 1867  
Revised Code by an employer during the employer's taxable year. 1868

(ii) "Increase in income taxes withheld" means the amount 1869  
by which the amount of income taxes withheld by an employer 1870  
during the employer's current taxable year exceeds the amount of 1871  
income taxes withheld by that employer during the employer's 1872  
immediately preceding taxable year. 1873

(iii) "Qualifying section 179 depreciation expense" means 1874  
the difference between (I) the amount of depreciation expense 1875  
directly or indirectly allowed to a taxpayer under section 179 1876  
of the Internal Revised Code, and (II) the amount of 1877  
depreciation expense directly or indirectly allowed to the 1878  
taxpayer under section 179 of the Internal Revenue Code as that 1879  
section existed on December 31, 2002. 1880

(21) (a) If the taxpayer was required to add an amount 1881  
under division (A) (20) (a) of this section for a taxable year, 1882  
deduct one of the following: 1883

(i) One-fifth of the amount so added for each of the five 1884

succeeding taxable years if the amount so added was five-sixths 1885  
of qualifying section 179 depreciation expense or depreciation 1886  
expense allowed by subsection (k) of section 168 of the Internal 1887  
Revenue Code; 1888

(ii) One-half of the amount so added for each of the two 1889  
succeeding taxable years if the amount so added was two-thirds 1890  
of such depreciation expense; 1891

(iii) One-sixth of the amount so added for each of the six 1892  
succeeding taxable years if the entire amount of such 1893  
depreciation expense was so added. 1894

(b) If the amount deducted under division (A) (21) (a) of 1895  
this section is attributable to an add-back allocated under 1896  
division (A) (20) (c) of this section, the amount deducted shall 1897  
be situated to the same location. Otherwise, the add-back shall 1898  
be apportioned using the apportionment factors for the taxable 1899  
year in which the deduction is taken, subject to one or more of 1900  
the four alternative methods of apportionment enumerated in 1901  
section 5747.21 of the Revised Code. 1902

(c) No deduction is available under division (A) (21) (a) of 1903  
this section with regard to any depreciation allowed by section 1904  
168(k) of the Internal Revenue Code and by the qualifying 1905  
section 179 depreciation expense amount to the extent that such 1906  
depreciation results in or increases a federal net operating 1907  
loss carryback or carryforward. If no such deduction is 1908  
available for a taxable year, the taxpayer may carry forward the 1909  
amount not deducted in such taxable year to the next taxable 1910  
year and add that amount to any deduction otherwise available 1911  
under division (A) (21) (a) of this section for that next taxable 1912  
year. The carryforward of amounts not so deducted shall continue 1913  
until the entire addition required by division (A) (20) (a) of 1914

this section has been deducted. 1915

(d) No refund shall be allowed as a result of adjustments 1916  
made by division (A) (21) of this section. 1917

(22) Deduct, to the extent not otherwise deducted or 1918  
excluded in computing federal or Ohio adjusted gross income for 1919  
the taxable year, the amount the taxpayer received during the 1920  
taxable year as reimbursement for life insurance premiums under 1921  
section 5919.31 of the Revised Code. 1922

(23) Deduct, to the extent not otherwise deducted or 1923  
excluded in computing federal or Ohio adjusted gross income for 1924  
the taxable year, the amount the taxpayer received during the 1925  
taxable year as a death benefit paid by the adjutant general 1926  
under section 5919.33 of the Revised Code. 1927

(24) Deduct, to the extent included in federal adjusted 1928  
gross income and not otherwise allowable as a deduction or 1929  
exclusion in computing federal or Ohio adjusted gross income for 1930  
the taxable year, military pay and allowances received by the 1931  
taxpayer during the taxable year for active duty service in the 1932  
United States army, air force, navy, marine corps, or coast 1933  
guard or reserve components thereof or the national guard. The 1934  
deduction may not be claimed for military pay and allowances 1935  
received by the taxpayer while the taxpayer is stationed in this 1936  
state. 1937

(25) Deduct, to the extent not otherwise allowable as a 1938  
deduction or exclusion in computing federal or Ohio adjusted 1939  
gross income for the taxable year and not otherwise compensated 1940  
for by any other source, the amount of qualified organ donation 1941  
expenses incurred by the taxpayer during the taxable year, not 1942  
to exceed ten thousand dollars. A taxpayer may deduct qualified 1943

organ donation expenses only once for all taxable years 1944  
beginning with taxable years beginning in 2007. 1945

For the purposes of division (A) (25) of this section: 1946

(a) "Human organ" means all or any portion of a human 1947  
liver, pancreas, kidney, intestine, or lung, and any portion of 1948  
human bone marrow. 1949

(b) "Qualified organ donation expenses" means travel 1950  
expenses, lodging expenses, and wages and salary forgone by a 1951  
taxpayer in connection with the taxpayer's donation, while 1952  
living, of one or more of the taxpayer's human organs to another 1953  
human being. 1954

(26) Deduct, to the extent not otherwise deducted or 1955  
excluded in computing federal or Ohio adjusted gross income for 1956  
the taxable year, amounts received by the taxpayer as retired 1957  
personnel pay for service in the uniformed services or reserve 1958  
components thereof, or the national guard, or received by the 1959  
surviving spouse or former spouse of such a taxpayer under the 1960  
survivor benefit plan on account of such a taxpayer's death. If 1961  
the taxpayer receives income on account of retirement paid under 1962  
the federal civil service retirement system or federal employees 1963  
retirement system, or under any successor retirement program 1964  
enacted by the congress of the United States that is established 1965  
and maintained for retired employees of the United States 1966  
government, and such retirement income is based, in whole or in 1967  
part, on credit for the taxpayer's uniformed service, the 1968  
deduction allowed under this division shall include only that 1969  
portion of such retirement income that is attributable to the 1970  
taxpayer's uniformed service, to the extent that portion of such 1971  
retirement income is otherwise included in federal adjusted 1972  
gross income and is not otherwise deducted under this section. 1973

Any amount deducted under division (A) (26) of this section is 1974  
not included in a taxpayer's adjusted gross income for the 1975  
purposes of section 5747.055 of the Revised Code. No amount may 1976  
be deducted under division (A) (26) of this section on the basis 1977  
of which a credit was claimed under section 5747.055 of the 1978  
Revised Code. 1979

(27) Deduct, to the extent not otherwise deducted or 1980  
excluded in computing federal or Ohio adjusted gross income for 1981  
the taxable year, the amount the taxpayer received during the 1982  
taxable year from the military injury relief fund created in 1983  
section 5101.98 of the Revised Code. 1984

(28) Deduct, to the extent not otherwise deducted or 1985  
excluded in computing federal or Ohio adjusted gross income for 1986  
the taxable year, the amount the taxpayer received as a veterans 1987  
bonus during the taxable year from the Ohio department of 1988  
veterans services as authorized by Section 2r of Article VIII, 1989  
Ohio Constitution. 1990

(29) Deduct, to the extent not otherwise deducted or 1991  
excluded in computing federal or Ohio adjusted gross income for 1992  
the taxable year, any income derived from a transfer agreement 1993  
or from the enterprise transferred under that agreement under 1994  
section 4313.02 of the Revised Code. 1995

(30) Deduct, to the extent not otherwise deducted or 1996  
excluded in computing federal or Ohio adjusted gross income for 1997  
the taxable year, Ohio college opportunity or federal Pell grant 1998  
amounts received by the taxpayer or the taxpayer's spouse or 1999  
dependent pursuant to section 3333.122 of the Revised Code or 20  
U.S.C. 1070a, et seq., and used to pay room or board furnished 2001  
by the educational institution for which the grant was awarded 2002  
at the institution's facilities, including meal plans 2003

administered by the institution. For the purposes of this 2004  
division, receipt of a grant includes the distribution of a 2005  
grant directly to an educational institution and the crediting 2006  
of the grant to the enrollee's account with the institution. 2007

(31) Deduct one-half of the taxpayer's Ohio small business 2008  
investor income, the deduction not to exceed sixty-two thousand 2009  
five hundred dollars for each spouse if spouses file separate 2010  
returns under section 5747.08 of the Revised Code or one hundred 2011  
twenty-five thousand dollars for all other taxpayers. No pass- 2012  
through entity may claim a deduction under this division. 2013

For the purposes of this division, "Ohio small business 2014  
investor income" means the portion of a taxpayer's adjusted 2015  
gross income that is business income reduced by deductions from 2016  
business income and apportioned or allocated to this state under 2017  
sections 5747.21 and 5747.22 of the Revised Code, to the extent 2018  
not otherwise deducted or excluded in computing federal or Ohio 2019  
adjusted gross income for the taxable year. 2020

(B) "Business income" means income, including gain or 2021  
loss, arising from transactions, activities, and sources in the 2022  
regular course of a trade or business and includes income, gain, 2023  
or loss from real property, tangible property, and intangible 2024  
property if the acquisition, rental, management, and disposition 2025  
of the property constitute integral parts of the regular course 2026  
of a trade or business operation. "Business income" includes 2027  
income, including gain or loss, from a partial or complete 2028  
liquidation of a business, including, but not limited to, gain 2029  
or loss from the sale or other disposition of goodwill. 2030

(C) "Nonbusiness income" means all income other than 2031  
business income and may include, but is not limited to, 2032  
compensation, rents and royalties from real or tangible personal 2033

property, capital gains, interest, dividends and distributions, 2034  
patent or copyright royalties, or lottery winnings, prizes, and 2035  
awards. 2036

(D) "Compensation" means any form of remuneration paid to 2037  
an employee for personal services. 2038

(E) "Fiduciary" means a guardian, trustee, executor, 2039  
administrator, receiver, conservator, or any other person acting 2040  
in any fiduciary capacity for any individual, trust, or estate. 2041

(F) "Fiscal year" means an accounting period of twelve 2042  
months ending on the last day of any month other than December. 2043

(G) "Individual" means any natural person. 2044

(H) "Internal Revenue Code" means the "Internal Revenue 2045  
Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended. 2046

(I) "Resident" means any of the following, provided that 2047  
division (I) (3) of this section applies only to taxable years of 2048  
a trust beginning in 2002 or thereafter: 2049

(1) An individual who is domiciled in this state, subject 2050  
to section 5747.24 of the Revised Code; 2051

(2) The estate of a decedent who at the time of death was 2052  
domiciled in this state. The domicile tests of section 5747.24 2053  
of the Revised Code are not controlling for purposes of division 2054  
(I) (2) of this section. 2055

(3) A trust that, in whole or part, resides in this state. 2056  
If only part of a trust resides in this state, the trust is a 2057  
resident only with respect to that part. 2058

For the purposes of division (I) (3) of this section: 2059

(a) A trust resides in this state for the trust's current 2060

taxable year to the extent, as described in division (I) (3) (d) 2061  
of this section, that the trust consists directly or indirectly, 2062  
in whole or in part, of assets, net of any related liabilities, 2063  
that were transferred, or caused to be transferred, directly or 2064  
indirectly, to the trust by any of the following: 2065

(i) A person, a court, or a governmental entity or 2066  
instrumentality on account of the death of a decedent, but only 2067  
if the trust is described in division (I) (3) (e) (i) or (ii) of 2068  
this section; 2069

(ii) A person who was domiciled in this state for the 2070  
purposes of this chapter when the person directly or indirectly 2071  
transferred assets to an irrevocable trust, but only if at least 2072  
one of the trust's qualifying beneficiaries is domiciled in this 2073  
state for the purposes of this chapter during all or some 2074  
portion of the trust's current taxable year; 2075

(iii) A person who was domiciled in this state for the 2076  
purposes of this chapter when the trust document or instrument 2077  
or part of the trust document or instrument became irrevocable, 2078  
but only if at least one of the trust's qualifying beneficiaries 2079  
is a resident domiciled in this state for the purposes of this 2080  
chapter during all or some portion of the trust's current 2081  
taxable year. If a trust document or instrument became 2082  
irrevocable upon the death of a person who at the time of death 2083  
was domiciled in this state for purposes of this chapter, that 2084  
person is a person described in division (I) (3) (a) (iii) of this 2085  
section. 2086

(b) A trust is irrevocable to the extent that the 2087  
transferor is not considered to be the owner of the net assets 2088  
of the trust under sections 671 to 678 of the Internal Revenue 2089  
Code. 2090



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

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

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

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the

qualifying ratio last computed without regard to the subsequent 2121  
transfer, and (2) the fair market value of the subsequently 2122  
transferred assets at the time transferred, net of any related 2123  
liabilities, from sources enumerated in division (I) (3) (a) of 2124  
this section. The denominator of the revised qualifying ratio is 2125  
the fair market value of all the trust's assets immediately 2126  
after the subsequent transfer, net of any related liabilities. 2127

(iii) Whether a transfer to the trust is by or from any of 2128  
the sources enumerated in division (I) (3) (a) of this section 2129  
shall be ascertained without regard to the domicile of the 2130  
trust's beneficiaries. 2131

(e) For the purposes of division (I) (3) (a) (i) of this 2132  
section: 2133

(i) A trust is described in division (I) (3) (e) (i) of this 2134  
section if the trust is a testamentary trust and the testator of 2135  
that testamentary trust was domiciled in this state at the time 2136  
of the testator's death for purposes of the taxes levied under 2137  
Chapter 5731. of the Revised Code. 2138

(ii) A trust is described in division (I) (3) (e) (ii) of 2139  
this section if the transfer is a qualifying transfer described 2140  
in any of divisions (I) (3) (f) (i) to (vi) of this section, the 2141  
trust is an irrevocable inter vivos trust, and at least one of 2142  
the trust's qualifying beneficiaries is domiciled in this state 2143  
for purposes of this chapter during all or some portion of the 2144  
trust's current taxable year. 2145

(f) For the purposes of division (I) (3) (e) (ii) of this 2146  
section, a "qualifying transfer" is a transfer of assets, net of 2147  
any related liabilities, directly or indirectly to a trust, if 2148  
the transfer is described in any of the following: 2149

(i) The transfer is made to a trust, created by the 2150  
decedent before the decedent's death and while the decedent was 2151  
domiciled in this state for the purposes of this chapter, and, 2152  
prior to the death of the decedent, the trust became irrevocable 2153  
while the decedent was domiciled in this state for the purposes 2154  
of this chapter. 2155

(ii) The transfer is made to a trust to which the 2156  
decedent, prior to the decedent's death, had directly or 2157  
indirectly transferred assets, net of any related liabilities, 2158  
while the decedent was domiciled in this state for the purposes 2159  
of this chapter, and prior to the death of the decedent the 2160  
trust became irrevocable while the decedent was domiciled in 2161  
this state for the purposes of this chapter. 2162

(iii) The transfer is made on account of a contractual 2163  
relationship existing directly or indirectly between the 2164  
transferor and either the decedent or the estate of the decedent 2165  
at any time prior to the date of the decedent's death, and the 2166  
decedent was domiciled in this state at the time of death for 2167  
purposes of the taxes levied under Chapter 5731. of the Revised 2168  
Code. 2169

(iv) The transfer is made to a trust on account of a 2170  
contractual relationship existing directly or indirectly between 2171  
the transferor and another person who at the time of the 2172  
decedent's death was domiciled in this state for purposes of 2173  
this chapter. 2174

(v) The transfer is made to a trust on account of the will 2175  
of a testator who was domiciled in this state at the time of the 2176  
testator's death for purposes of the taxes levied under Chapter 2177  
5731. of the Revised Code. 2178

(vi) The transfer is made to a trust created by or caused	2179
to be created by a court, and the trust was directly or	2180
indirectly created in connection with or as a result of the	2181
death of an individual who, for purposes of the taxes levied	2182
under Chapter 5731. of the Revised Code, was domiciled in this	2183
state at the time of the individual's death.	2184
(g) The tax commissioner may adopt rules to ascertain the	2185
part of a trust residing in this state.	2186
(J) "Nonresident" means an individual or estate that is	2187
not a resident. An individual who is a resident for only part of	2188
a taxable year is a nonresident for the remainder of that	2189
taxable year.	2190
(K) "Pass-through entity" has the same meaning as in	2191
section 5733.04 of the Revised Code.	2192
(L) "Return" means the notifications and reports required	2193
to be filed pursuant to this chapter for the purpose of	2194
reporting the tax due and includes declarations of estimated tax	2195
when so required.	2196
(M) "Taxable year" means the calendar year or the	2197
taxpayer's fiscal year ending during the calendar year, or	2198
fractional part thereof, upon which the adjusted gross income is	2199
calculated pursuant to this chapter.	2200
(N) "Taxpayer" means any person subject to the tax imposed	2201
by section 5747.02 of the Revised Code or any pass-through	2202
entity that makes the election under division (D) of section	2203
5747.08 of the Revised Code.	2204
(O) "Dependents" means dependents as defined in the	2205
Internal Revenue Code and as claimed in the taxpayer's federal	2206
income tax return for the taxable year or which the taxpayer	2207

would have been permitted to claim had the taxpayer filed a 2208  
federal income tax return. 2209

(P) "Principal county of employment" means, in the case of 2210  
a nonresident, the county within the state in which a taxpayer 2211  
performs services for an employer or, if those services are 2212  
performed in more than one county, the county in which the major 2213  
portion of the services are performed. 2214

(Q) As used in sections 5747.50 to 5747.55 of the Revised 2215  
Code: 2216

(1) "Subdivision" means any county, municipal corporation, 2217  
park district, or township. 2218

(2) "Essential local government purposes" includes all 2219  
functions that any subdivision is required by general law to 2220  
exercise, including like functions that are exercised under a 2221  
charter adopted pursuant to the Ohio Constitution. 2222

(R) "Overpayment" means any amount already paid that 2223  
exceeds the figure determined to be the correct amount of the 2224  
tax. 2225

(S) "Taxable income" or "Ohio taxable income" applies only 2226  
to estates and trusts, and means federal taxable income, as 2227  
defined and used in the Internal Revenue Code, adjusted as 2228  
follows: 2229

(1) Add interest or dividends, net of ordinary, necessary, 2230  
and reasonable expenses not deducted in computing federal 2231  
taxable income, on obligations or securities of any state or of 2232  
any political subdivision or authority of any state, other than 2233  
this state and its subdivisions and authorities, but only to the 2234  
extent that such net amount is not otherwise includible in Ohio 2235  
taxable income and is described in either division (S) (1) (a) or 2236

(b) of this section:	2237
(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;	2238 2239 2240
(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.	2241 2242
(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 the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, 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;	2243 2244 2245 2246 2247 2248 2249 2250 2251
(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;	2252 2253
(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, 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 exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S) (1) (a) or (b) of this section;	2254 2255 2256 2257 2258 2259 2260 2261 2262
(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for	2263 2264 2265

the taxable year, had the targeted jobs credit allowed under 2266  
sections 38, 51, and 52 of the Internal Revenue Code not been in 2267  
effect, but only to the extent such amount relates either to 2268  
income included in federal taxable income for the taxable year 2269  
or to income of the S portion of an electing small business 2270  
trust for the taxable year; 2271

(6) Deduct any interest or interest equivalent, net of 2272  
related expenses deducted in computing federal taxable income, 2273  
on public obligations and purchase obligations, but only to the 2274  
extent that such net amount relates either to income included in 2275  
federal taxable income for the taxable year or to income of the 2276  
S portion of an electing small business trust for the taxable 2277  
year; 2278

(7) Add any loss or deduct any gain resulting from sale, 2279  
exchange, or other disposition of public obligations to the 2280  
extent that such loss has been deducted or such gain has been 2281  
included in computing either federal taxable income or income of 2282  
the S portion of an electing small business trust for the 2283  
taxable year; 2284

(8) Except in the case of the final return of an estate, 2285  
add any amount deducted by the taxpayer on both its Ohio estate 2286  
tax return pursuant to section 5731.14 of the Revised Code, and 2287  
on its federal income tax return in determining federal taxable 2288  
income; 2289

(9) (a) Deduct any amount included in federal taxable 2290  
income solely because the amount represents a reimbursement or 2291  
refund of expenses that in a previous year the decedent had 2292  
deducted as an itemized deduction pursuant to section 63 of the 2293  
Internal Revenue Code and applicable treasury regulations. The 2294  
deduction otherwise allowed under division (S) (9) (a) of this 2295

section shall be reduced to the extent the reimbursement is 2296  
attributable to an amount the taxpayer or decedent deducted 2297  
under this section in any taxable year. 2298

(b) Add any amount not otherwise included in Ohio taxable 2299  
income for any taxable year to the extent that the amount is 2300  
attributable to the recovery during the taxable year of any 2301  
amount deducted or excluded in computing federal or Ohio taxable 2302  
income in any taxable year, but only to the extent such amount 2303  
has not been distributed to beneficiaries for the taxable year. 2304

(10) Deduct any portion of the deduction described in 2305  
section 1341(a)(2) of the Internal Revenue Code, for repaying 2306  
previously reported income received under a claim of right, that 2307  
meets both of the following requirements: 2308

(a) It is allowable for repayment of an item that was 2309  
included in the taxpayer's taxable income or the decedent's 2310  
adjusted gross income for a prior taxable year and did not 2311  
qualify for a credit under division (A) or (B) of section 2312  
5747.05 of the Revised Code for that year. 2313

(b) It does not otherwise reduce the taxpayer's taxable 2314  
income or the decedent's adjusted gross income for the current 2315  
or any other taxable year. 2316

(11) Add any amount claimed as a credit under section 2317  
5747.059 or 5747.65 of the Revised Code to the extent that the 2318  
amount satisfies either of the following: 2319

(a) The amount was deducted or excluded from the 2320  
computation of the taxpayer's federal taxable income as required 2321  
to be reported for the taxpayer's taxable year under the 2322  
Internal Revenue Code; 2323

(b) The amount resulted in a reduction in the taxpayer's 2324



federal taxable income as required to be reported for any of the 2325  
taxpayer's taxable years under the Internal Revenue Code. 2326

(12) Deduct any amount, net of related expenses deducted 2327  
in computing federal taxable income, that a trust is required to 2328  
report as farm income on its federal income tax return, but only 2329  
if the assets of the trust include at least ten acres of land 2330  
satisfying the definition of "land devoted exclusively to 2331  
agricultural use" under section 5713.30 of the Revised Code, 2332  
regardless of whether the land is valued for tax purposes as 2333  
such land under sections 5713.30 to 5713.38 of the Revised Code. 2334  
If the trust is a pass-through entity investor, section 5747.231 2335  
of the Revised Code applies in ascertaining if the trust is 2336  
eligible to claim the deduction provided by division (S) (12) of 2337  
this section in connection with the pass-through entity's farm 2338  
income. 2339

Except for farm income attributable to the S portion of an 2340  
electing small business trust, the deduction provided by 2341  
division (S) (12) of this section is allowed only to the extent 2342  
that the trust has not distributed such farm income. Division 2343  
(S) (12) of this section applies only to taxable years of a trust 2344  
beginning in 2002 or thereafter. 2345

(13) Add the net amount of income described in section 2346  
641(c) of the Internal Revenue Code to the extent that amount is 2347  
not included in federal taxable income. 2348

(14) Add or deduct the amount the taxpayer would be 2349  
required to add or deduct under division (A) (20) or (21) of this 2350  
section if the taxpayer's Ohio taxable income were computed in 2351  
the same manner as an individual's Ohio adjusted gross income is 2352  
computed under this section. In the case of a trust, division 2353  
(S) (14) of this section applies only to any of the trust's 2354

taxable years beginning in 2002 or thereafter. 2355

(T) "School district income" and "school district income 2356  
tax" have the same meanings as in section 5748.01 of the Revised 2357  
Code. 2358

(U) As used in divisions (A)(8), (A)(9), (S)(6), and (S) 2359  
(7) of this section, "public obligations," "purchase 2360  
obligations," and "interest or interest equivalent" have the 2361  
same meanings as in section 5709.76 of the Revised Code. 2362

(V) "Limited liability company" means any limited 2363  
liability company formed under Chapter 1705. of the Revised Code 2364  
or under the laws of any other state. 2365

(W) "Pass-through entity investor" means any person who, 2366  
during any portion of a taxable year of a pass-through entity, 2367  
is a partner, member, shareholder, or equity investor in that 2368  
pass-through entity. 2369

(X) "Banking day" has the same meaning as in section 2370  
1304.01 of the Revised Code. 2371

(Y) "Month" means a calendar month. 2372

(Z) "Quarter" means the first three months, the second 2373  
three months, the third three months, or the last three months 2374  
of the taxpayer's taxable year. 2375

(AA)(1) "Eligible institution" means a state university or 2376  
state institution of higher education as defined in section 2377  
3345.011 of the Revised Code, or a private, nonprofit college, 2378  
university, or other post-secondary institution located in this 2379  
state that possesses a certificate of authorization issued by 2380  
the Ohio board of regents pursuant to Chapter 1713. of the 2381  
Revised Code or a certificate of registration issued by the 2382

state board of career colleges and schools under Chapter 3332. 2383  
of the Revised Code. 2384

(2) "Qualified tuition and fees" means tuition and fees 2385  
imposed by an eligible institution as a condition of enrollment 2386  
or attendance, not exceeding two thousand five hundred dollars 2387  
in each of the individual's first two years of post-secondary 2388  
education. If the individual is a part-time student, "qualified 2389  
tuition and fees" includes tuition and fees paid for the 2390  
academic equivalent of the first two years of post-secondary 2391  
education during a maximum of five taxable years, not exceeding 2392  
a total of five thousand dollars. "Qualified tuition and fees" 2393  
does not include: 2394

(a) Expenses for any course or activity involving sports, 2395  
games, or hobbies unless the course or activity is part of the 2396  
individual's degree or diploma program; 2397

(b) The cost of books, room and board, student activity 2398  
fees, athletic fees, insurance expenses, or other expenses 2399  
unrelated to the individual's academic course of instruction; 2400

(c) Tuition, fees, or other expenses paid or reimbursed 2401  
through an employer, scholarship, grant in aid, or other 2402  
educational benefit program. 2403

(BB) (1) "Modified business income" means the business 2404  
income included in a trust's Ohio taxable income after such 2405  
taxable income is first reduced by the qualifying trust amount, 2406  
if any. 2407

(2) "Qualifying trust amount" of a trust means capital 2408  
gains and losses from the sale, exchange, or other disposition 2409  
of equity or ownership interests in, or debt obligations of, a 2410  
qualifying investee to the extent included in the trust's Ohio 2411

taxable income, but only if the following requirements are	2412
satisfied:	2413
(a) The book value of the qualifying investee's physical	2414
assets in this state and everywhere, as of the last day of the	2415
qualifying investee's fiscal or calendar year ending immediately	2416
prior to the date on which the trust recognizes the gain or	2417
loss, is available to the trust.	2418
(b) The requirements of section 5747.011 of the Revised	2419
Code are satisfied for the trust's taxable year in which the	2420
trust recognizes the gain or loss.	2421
Any gain or loss that is not a qualifying trust amount is	2422
modified business income, qualifying investment income, or	2423
modified nonbusiness income, as the case may be.	2424
(3) "Modified nonbusiness income" means a trust's Ohio	2425
taxable income other than modified business income, other than	2426
the qualifying trust amount, and other than qualifying	2427
investment income, as defined in section 5747.012 of the Revised	2428
Code, to the extent such qualifying investment income is not	2429
otherwise part of modified business income.	2430
(4) "Modified Ohio taxable income" applies only to trusts,	2431
and means the sum of the amounts described in divisions (BB) (4)	2432
(a) to (c) of this section:	2433
(a) The fraction, calculated under section 5747.013, and	2434
applying section 5747.231 of the Revised Code, multiplied by the	2435
sum of the following amounts:	2436
(i) The trust's modified business income;	2437
(ii) The trust's qualifying investment income, as defined	2438
in section 5747.012 of the Revised Code, but only to the extent	2439

the qualifying investment income does not otherwise constitute 2440  
modified business income and does not otherwise constitute a 2441  
qualifying trust amount. 2442

(b) The qualifying trust amount multiplied by a fraction, 2443  
the numerator of which is the sum of the book value of the 2444  
qualifying investee's physical assets in this state on the last 2445  
day of the qualifying investee's fiscal or calendar year ending 2446  
immediately prior to the day on which the trust recognizes the 2447  
qualifying trust amount, and the denominator of which is the sum 2448  
of the book value of the qualifying investee's total physical 2449  
assets everywhere on the last day of the qualifying investee's 2450  
fiscal or calendar year ending immediately prior to the day on 2451  
which the trust recognizes the qualifying trust amount. If, for 2452  
a taxable year, the trust recognizes a qualifying trust amount 2453  
with respect to more than one qualifying investee, the amount 2454  
described in division (BB) (4) (b) of this section shall equal the 2455  
sum of the products so computed for each such qualifying 2456  
investee. 2457

(c) (i) With respect to a trust or portion of a trust that 2458  
is a resident as ascertained in accordance with division (I) (3) 2459  
(d) of this section, its modified nonbusiness income. 2460

(ii) With respect to a trust or portion of a trust that is 2461  
not a resident as ascertained in accordance with division (I) (3) 2462  
(d) of this section, the amount of its modified nonbusiness 2463  
income satisfying the descriptions in divisions (B) (2) to (5) of 2464  
section 5747.20 of the Revised Code, except as otherwise 2465  
provided in division (BB) (4) (c) (ii) of this section. With 2466  
respect to a trust or portion of a trust that is not a resident 2467  
as ascertained in accordance with division (I) (3) (d) of this 2468  
section, the trust's portion of modified nonbusiness income 2469

recognized from the sale, exchange, or other disposition of a 2470  
debt interest in or equity interest in a section 5747.212 2471  
entity, as defined in section 5747.212 of the Revised Code, 2472  
without regard to division (A) of that section, shall not be 2473  
allocated to this state in accordance with section 5747.20 of 2474  
the Revised Code but shall be apportioned to this state in 2475  
accordance with division (B) of section 5747.212 of the Revised 2476  
Code without regard to division (A) of that section. 2477

If the allocation and apportionment of a trust's income 2478  
under divisions (BB) (4) (a) and (c) of this section do not fairly 2479  
represent the modified Ohio taxable income of the trust in this 2480  
state, the alternative methods described in division (C) of 2481  
section 5747.21 of the Revised Code may be applied in the manner 2482  
and to the same extent provided in that section. 2483

(5) (a) Except as set forth in division (BB) (5) (b) of this 2484  
section, "qualifying investee" means a person in which a trust 2485  
has an equity or ownership interest, or a person or unit of 2486  
government the debt obligations of either of which are owned by 2487  
a trust. For the purposes of division (BB) (2) (a) of this section 2488  
and for the purpose of computing the fraction described in 2489  
division (BB) (4) (b) of this section, all of the following apply: 2490

(i) If the qualifying investee is a member of a qualifying 2491  
controlled group on the last day of the qualifying investee's 2492  
fiscal or calendar year ending immediately prior to the date on 2493  
which the trust recognizes the gain or loss, then "qualifying 2494  
investee" includes all persons in the qualifying controlled 2495  
group on such last day. 2496

(ii) If the qualifying investee, or if the qualifying 2497  
investee and any members of the qualifying controlled group of 2498  
which the qualifying investee is a member on the last day of the 2499

qualifying investee's fiscal or calendar year ending immediately 2500  
prior to the date on which the trust recognizes the gain or 2501  
loss, separately or cumulatively own, directly or indirectly, on 2502  
the last day of the qualifying investee's fiscal or calendar 2503  
year ending immediately prior to the date on which the trust 2504  
recognizes the qualifying trust amount, more than fifty per cent 2505  
of the equity of a pass-through entity, then the qualifying 2506  
investee and the other members are deemed to own the 2507  
proportionate share of the pass-through entity's physical assets 2508  
which the pass-through entity directly or indirectly owns on the 2509  
last day of the pass-through entity's calendar or fiscal year 2510  
ending within or with the last day of the qualifying investee's 2511  
fiscal or calendar year ending immediately prior to the date on 2512  
which the trust recognizes the qualifying trust amount. 2513

(iii) For the purposes of division (BB) (5) (a) (iii) of this 2514  
section, "upper level pass-through entity" means a pass-through 2515  
entity directly or indirectly owning any equity of another pass- 2516  
through entity, and "lower level pass-through entity" means that 2517  
other pass-through entity. 2518

An upper level pass-through entity, whether or not it is 2519  
also a qualifying investee, is deemed to own, on the last day of 2520  
the upper level pass-through entity's calendar or fiscal year, 2521  
the proportionate share of the lower level pass-through entity's 2522  
physical assets that the lower level pass-through entity 2523  
directly or indirectly owns on the last day of the lower level 2524  
pass-through entity's calendar or fiscal year ending within or 2525  
with the last day of the upper level pass-through entity's 2526  
fiscal or calendar year. If the upper level pass-through entity 2527  
directly and indirectly owns less than fifty per cent of the 2528  
equity of the lower level pass-through entity on each day of the 2529  
upper level pass-through entity's calendar or fiscal year in 2530

which or with which ends the calendar or fiscal year of the 2531  
lower level pass-through entity and if, based upon clear and 2532  
convincing evidence, complete information about the location and 2533  
cost of the physical assets of the lower pass-through entity is 2534  
not available to the upper level pass-through entity, then 2535  
solely for purposes of ascertaining if a gain or loss 2536  
constitutes a qualifying trust amount, the upper level pass- 2537  
through entity shall be deemed as owning no equity of the lower 2538  
level pass-through entity for each day during the upper level 2539  
pass-through entity's calendar or fiscal year in which or with 2540  
which ends the lower level pass-through entity's calendar or 2541  
fiscal year. Nothing in division (BB) (5) (a) (iii) of this section 2542  
shall be construed to provide for any deduction or exclusion in 2543  
computing any trust's Ohio taxable income. 2544

(b) With respect to a trust that is not a resident for the 2545  
taxable year and with respect to a part of a trust that is not a 2546  
resident for the taxable year, "qualifying investee" for that 2547  
taxable year does not include a C corporation if both of the 2548  
following apply: 2549

(i) During the taxable year the trust or part of the trust 2550  
recognizes a gain or loss from the sale, exchange, or other 2551  
disposition of equity or ownership interests in, or debt 2552  
obligations of, the C corporation. 2553

(ii) Such gain or loss constitutes nonbusiness income. 2554

(6) "Available" means information is such that a person is 2555  
able to learn of the information by the due date plus 2556  
extensions, if any, for filing the return for the taxable year 2557  
in which the trust recognizes the gain or loss. 2558

(CC) "Qualifying controlled group" has the same meaning as 2559



in section 5733.04 of the Revised Code.	2560
(DD) "Related member" has the same meaning as in section 5733.042 of the Revised Code.	2561 2562
(EE) (1) For the purposes of division (EE) of this section:	2563
(a) "Qualifying person" means any person other than a qualifying corporation.	2564 2565
(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:	2566 2567 2568
(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;	2569 2570 2571 2572
(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.	2573 2574 2575 2576 2577
(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.	2578 2579 2580
(FF) For purposes of this chapter and Chapter 5751. of the Revised Code:	2581 2582
(1) "Trust" does not include a qualified pre-income tax trust.	2583 2584
(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election	2585 2586

as described in division (FF) (3) of this section. 2587

(3) A "qualifying pre-income tax trust election" is an 2588  
election by a pre-income tax trust to subject to the tax imposed 2589  
by section 5751.02 of the Revised Code the pre-income tax trust 2590  
and all pass-through entities of which the trust owns or 2591  
controls, directly, indirectly, or constructively through 2592  
related interests, five per cent or more of the ownership or 2593  
equity interests. The trustee shall notify the tax commissioner 2594  
in writing of the election on or before April 15, 2006. The 2595  
election, if timely made, shall be effective on and after 2596  
January 1, 2006, and shall apply for all tax periods and tax 2597  
years until revoked by the trustee of the trust. 2598

(4) A "pre-income tax trust" is a trust that satisfies all 2599  
of the following requirements: 2600

(a) The document or instrument creating the trust was 2601  
executed by the grantor before January 1, 1972; 2602

(b) The trust became irrevocable upon the creation of the 2603  
trust; and 2604

(c) The grantor was domiciled in this state at the time 2605  
the trust was created. 2606

(GG) "Uniformed services" has the same meaning as in 10 2607  
U.S.C. 101. 2608

(HH) "Employee" means an individual who is an employee 2609  
under the rules adopted by the administrator of workers' 2610  
compensation pursuant to section 4175.01 of the Revised Code. 2611

**Section 2.** That existing sections 1349.61, 4121.01, 2612  
4123.01, 4123.026, 4141.01, and 5747.01 of the Revised Code are 2613  
hereby repealed. 2614