

As Passed by the Senate

133rd General Assembly

Regular Session

2019-2020

Sub. S. B. No. 201

Senator Dolan

**Cosponsors: Senators Hoagland, Blessing, Burke, Craig, Eklund, Hackett, Kunze,
Lehner, O'Brien, Peterson, Rulli, Schaffer, Sykes, Williams, Wilson**

A BILL

To amend sections 4121.12, 4121.121, 4123.01, 1
4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 2
4141.24, 4740.131, 5733.40, 5747.07, and 5751.01 3
and to enact sections 4133.01, 4133.02, 4133.03, 4
4133.04, 4133.05, 4133.06, 4133.07, 4133.08, 5
4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 6
4133.14, and 4133.99 of the Revised Code to 7
create alternate employer organizations. 8

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

Section 1. That sections 4121.12, 4121.121, 4123.01, 9
4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 4141.24, 10
4740.131, 5733.40, 5747.07, and 5751.01 be amended and sections 11
4133.01, 4133.02, 4133.03, 4133.04, 4133.05, 4133.06, 4133.07, 12
4133.08, 4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 4133.14, 13
and 4133.99 of the Revised Code be enacted to read as follows: 14

Sec. 4121.12. (A) There is hereby created the bureau of 15
workers' compensation board of directors consisting of eleven 16
members to be appointed by the governor with the advice and 17
consent of the senate. One member shall be an individual who, on 18

account of the individual's previous vocation, employment, or 19
affiliations, can be classed as a representative of employees; 20
two members shall be individuals who, on account of their 21
previous vocation, employment, or affiliations, can be classed 22
as representatives of employee organizations and at least one of 23
these two individuals shall be a member of the executive 24
committee of the largest statewide labor federation; three 25
members shall be individuals who, on account of their previous 26
vocation, employment, or affiliations, can be classed as 27
representatives of employers, one of whom represents self- 28
insuring employers, one of whom is a state fund employer who 29
employs one hundred or more employees, and one of whom is a 30
state fund employer who employs less than one hundred employees; 31
two members shall be individuals who, on account of their 32
vocation, employment, or affiliations, can be classed as 33
investment and securities experts who have direct experience in 34
the management, analysis, supervision, or investment of assets 35
and are residents of this state; one member who shall be a 36
certified public accountant; one member who shall be an actuary 37
who is a member in good standing with the American academy of 38
actuaries or who is an associate or fellow with the casualty 39
actuarial society; and one member shall represent the public and 40
also be an individual who, on account of the individual's 41
previous vocation, employment, or affiliations, cannot be 42
classed as either predominantly representative of employees or 43
of employers. The governor shall select the chairperson of the 44
board who shall serve as chairperson at the pleasure of the 45
governor. 46

None of the members of the board, within one year 47
immediately preceding the member's appointment, shall have been 48
employed by the bureau of workers' compensation or by any 49

person, partnership, or corporation that has provided to the 50
bureau services of a financial or investment nature, including 51
the management, analysis, supervision, or investment of assets. 52

(B) Of the initial appointments made to the board, the 53
governor shall appoint the member who represents employees, one 54
member who represents employers, and the member who represents 55
the public to a term ending one year after June 11, 2007; one 56
member who represents employers, one member who represents 57
employee organizations, one member who is an investment and 58
securities expert, and the member who is a certified public 59
accountant to a term ending two years after June 11, 2007; and 60
one member who represents employers, one member who represents 61
employee organizations, one member who is an investment and 62
securities expert, and the member who is an actuary to a term 63
ending three years after June 11, 2007. Thereafter, terms of 64
office shall be for three years, with each term ending on the 65
same day of the same month as did the term that it succeeds. 66
Each member shall hold office from the date of the member's 67
appointment until the end of the term for which the member was 68
appointed. 69

Members may be reappointed. Any member appointed to fill a 70
vacancy occurring prior to the expiration date of the term for 71
which the member's predecessor was appointed shall hold office 72
as a member for the remainder of that term. A member shall 73
continue in office subsequent to the expiration date of the 74
member's term until a successor takes office or until a period 75
of sixty days has elapsed, whichever occurs first. 76

(C) In making appointments to the board, the governor 77
shall select the members from the list of names submitted by the 78
workers' compensation board of directors nominating committee 79

pursuant to this division. The nominating committee shall submit 80
to the governor a list containing four separate names for each 81
of the members on the board. Within fourteen days after the 82
submission of the list, the governor shall appoint individuals 83
from the list. 84

At least thirty days prior to a vacancy occurring as a 85
result of the expiration of a term and within thirty days after 86
other vacancies occurring on the board, the nominating committee 87
shall submit an initial list containing four names for each 88
vacancy. Within fourteen days after the submission of the 89
initial list, the governor either shall appoint individuals from 90
that list or request the nominating committee to submit another 91
list of four names for each member the governor has not 92
appointed from the initial list, which list the nominating 93
committee shall submit to the governor within fourteen days 94
after the governor's request. The governor then shall appoint, 95
within seven days after the submission of the second list, one 96
of the individuals from either list to fill the vacancy for 97
which the governor has not made an appointment from the initial 98
list. If the governor appoints an individual to fill a vacancy 99
occurring as a result of the expiration of a term, the 100
individual appointed shall begin serving as a member of the 101
board when the term for which the individual's predecessor was 102
appointed expires or immediately upon appointment by the 103
governor, whichever occurs later. With respect to the filling of 104
vacancies, the nominating committee shall provide the governor 105
with a list of four individuals who are, in the judgment of the 106
nominating committee, the most fully qualified to accede to 107
membership on the board. 108

In order for the name of an individual to be submitted to 109
the governor under this division, the nominating committee shall 110

approve the individual by an affirmative vote of a majority of 111
its members. 112

(D) All members of the board shall receive their 113
reasonable and necessary expenses pursuant to section 126.31 of 114
the Revised Code while engaged in the performance of their 115
duties as members and also shall receive an annual salary not to 116
exceed sixty thousand dollars in total, payable on the following 117
basis: 118

(1) Except as provided in division (D) (2) of this section, 119
a member shall receive two thousand five hundred dollars during 120
a month in which the member attends one or more meetings of the 121
board and shall receive no payment during a month in which the 122
member attends no meeting of the board. 123

(2) A member may receive no more than thirty thousand 124
dollars per year to compensate the member for attending meetings 125
of the board, regardless of the number of meetings held by the 126
board during a year or the number of meetings in excess of 127
twelve within a year that the member attends. 128

(3) Except as provided in division (D) (4) of this section, 129
if a member serves on the workers' compensation audit committee, 130
workers' compensation actuarial committee, or the workers' 131
compensation investment committee, the member shall receive two 132
thousand five hundred dollars during a month in which the member 133
attends one or more meetings of the committee on which the 134
member serves and shall receive no payment during any month in 135
which the member attends no meeting of that committee. 136

(4) A member may receive no more than thirty thousand 137
dollars per year to compensate the member for attending meetings 138
of any of the committees specified in division (D) (3) of this 139

section, regardless of the number of meetings held by a 140
committee during a year or the number of committees on which a 141
member serves. 142

The chairperson of the board shall set the meeting dates 143
of the board as necessary to perform the duties of the board 144
under this chapter and Chapters 4123., 4125., 4127., 4131., 145
4133., and 4167. of the Revised Code. The board shall meet at 146
least twelve times a year. The administrator of workers' 147
compensation shall provide professional and clerical assistance 148
to the board, as the board considers appropriate. 149

(E) Before entering upon the duties of office, each 150
appointed member of the board shall take an oath of office as 151
required by sections 3.22 and 3.23 of the Revised Code and file 152
in the office of the secretary of state the bond required under 153
section 4121.127 of the Revised Code. 154

(F) The board shall: 155

(1) Establish the overall administrative policy for the 156
bureau for the purposes of this chapter and Chapters 4123., 157
4125., 4127., 4131., 4133., and 4167. of the Revised Code; 158

(2) Review progress of the bureau in meeting its cost and 159
quality objectives and in complying with this chapter and 160
Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the 161
Revised Code; 162

(3) Submit an annual report to the president of the 163
senate, the speaker of the house of representatives, and the 164
governor and include all of the following in that report: 165

(a) An evaluation of the cost and quality objectives of 166
the bureau; 167

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| (b) A statement of the net assets available for the | 168 |
| provision of compensation and benefits under this chapter and | 169 |
| Chapters 4123., 4127., and 4131. of the Revised Code as of the | 170 |
| last day of the fiscal year; | 171 |
| (c) A statement of any changes that occurred in the net | 172 |
| assets available, including employer premiums and net investment | 173 |
| income, for the provision of compensation and benefits and | 174 |
| payment of administrative expenses, between the first and last | 175 |
| day of the fiscal year immediately preceding the date of the | 176 |
| report; | 177 |
| (d) The following information for each of the six | 178 |
| consecutive fiscal years occurring previous to the report: | 179 |
| (i) A schedule of the net assets available for | 180 |
| compensation and benefits; | 181 |
| (ii) The annual cost of the payment of compensation and | 182 |
| benefits; | 183 |
| (iii) Annual administrative expenses incurred; | 184 |
| (iv) Annual employer premiums allocated for the provision | 185 |
| of compensation and benefits. | 186 |
| (e) A description of any significant changes that occurred | 187 |
| during the six years for which the board provided the | 188 |
| information required under division (F) (3) (d) of this section | 189 |
| that affect the ability of the board to compare that information | 190 |
| from year to year. | 191 |
| (4) Review all independent financial audits of the bureau. | 192 |
| The administrator shall provide access to records of the bureau | 193 |
| to facilitate the review required under this division. | 194 |
| (5) Study issues as requested by the administrator or the | 195 |

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| governor; | 196 |
| (6) Contract with all of the following: | 197 |
| (a) An independent actuarial firm to assist the board in making recommendations to the administrator regarding premium rates; | 198 199 200 |
| (b) An outside investment counsel to assist the workers' compensation investment committee in fulfilling its duties; | 201 202 |
| (c) An independent fiduciary counsel to assist the board in the performance of its duties. | 203 204 |
| (7) Approve the investment policy developed by the workers' compensation investment committee pursuant to section 4121.129 of the Revised Code if the policy satisfies the requirements specified in section 4123.442 of the Revised Code-;i | 205 206 207 208 |
| (8) Review and publish the investment policy no less than annually and make copies available to interested parties-;i | 209 210 |
| (9) Prohibit, on a prospective basis, any specific investment it finds to be contrary to the investment policy approved by the board-;i | 211 212 213 |
| (10) Vote to open each investment class and allow the administrator to invest in an investment class only if the board, by a majority vote, opens that class; | 214 215 216 |
| (11) After opening a class but prior to the administrator investing in that class, adopt rules establishing due diligence standards for employees of the bureau to follow when investing in that class and establish policies and procedures to review and monitor the performance and value of each investment class; | 217 218 219 220 221 |
| (12) Submit a report annually on the performance and value | 222 |

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| of each investment class to the governor, the president and | 223 |
| minority leader of the senate, and the speaker and minority | 224 |
| leader of the house of representatives- i | 225 |
| (13) Advise and consent on all of the following: | 226 |
| (a) Administrative rules the administrator submits to it | 227 |
| pursuant to division (B) (5) of section 4121.121 of the Revised | 228 |
| Code for the classification of occupations or industries, for | 229 |
| premium rates and contributions, for the amount to be credited | 230 |
| to the surplus fund, for rules and systems of rating, rate | 231 |
| revisions, and merit rating; | 232 |
| (b) The duties and authority conferred upon the | 233 |
| administrator pursuant to section 4121.37 of the Revised Code; | 234 |
| (c) Rules the administrator adopts for the health | 235 |
| partnership program and the qualified health plan system, as | 236 |
| provided in sections 4121.44, 4121.441, and 4121.442 of the | 237 |
| Revised Code; | 238 |
| (d) Rules the administrator submits to it pursuant to | 239 |
| Chapter 4167. of the Revised Code regarding the public | 240 |
| employment risk reduction program and the protection of public | 241 |
| health care workers from exposure incidents. | 242 |
| As used in this division, "public health care worker" and | 243 |
| "exposure incident" have the same meanings as in section 4167.25 | 244 |
| of the Revised Code. | 245 |
| (14) Perform all duties required under this chapter and | 246 |
| Chapters 4123., 4125., 4127., 4131., <u>4133.</u> , and 4167. of the | 247 |
| Revised Code; | 248 |
| (15) Meet with the governor on an annual basis to discuss | 249 |
| the administrator's performance of the duties specified in this | 250 |

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| chapter and Chapters 4123., 4125., 4127., 4131., <u>4133.</u> , and | 251 |
| 4167. of the Revised Code; | 252 |
| (16) Develop and participate in a bureau of workers' | 253 |
| compensation board of directors education program that consists | 254 |
| of all of the following: | 255 |
| (a) An orientation component for newly appointed members; | 256 |
| (b) A continuing education component for board members who | 257 |
| have served for at least one year; | 258 |
| (c) A curriculum that includes education about each of the | 259 |
| following topics: | 260 |
| (i) Board member duties and responsibilities; | 261 |
| (ii) Compensation and benefits paid pursuant to this | 262 |
| chapter and Chapters 4123., 4127., and 4131. of the Revised | 263 |
| Code; | 264 |
| (iii) Ethics; | 265 |
| (iv) Governance processes and procedures; | 266 |
| (v) Actuarial soundness; | 267 |
| (vi) Investments; | 268 |
| (vii) Any other subject matter the board believes is | 269 |
| reasonably related to the duties of a board member. | 270 |
| (17) Hold all sessions, classes, and other events for the | 271 |
| program developed pursuant to division (F)(16) of this section | 272 |
| in this state. | 273 |
| (G) The board may do both of the following: | 274 |
| (1) Vote to close any investment class; | 275 |

(2) Create any committees in addition to the workers' 276
compensation audit committee, the workers' compensation 277
actuarial committee, and the workers' compensation investment 278
committee that the board determines are necessary to assist the 279
board in performing its duties. 280

(H) The office of a member of the board who is convicted 281
of or pleads guilty to a felony, a theft offense as defined in 282
section 2913.01 of the Revised Code, or a violation of section 283
102.02, 102.03, 102.04, 2921.02, 2921.11, 2921.13, 2921.31, 284
2921.41, 2921.42, 2921.43, or 2921.44 of the Revised Code shall 285
be deemed vacant. The vacancy shall be filled in the same manner 286
as the original appointment. A person who has pleaded guilty to 287
or been convicted of an offense of that nature is ineligible to 288
be a member of the board. A member who receives a bill of 289
indictment for any of the offenses specified in this section 290
shall be automatically suspended from the board pending 291
resolution of the criminal matter. 292

(I) For the purposes of division (G) (1) of section 121.22 293
of the Revised Code, the meeting between the governor and the 294
board to review the administrator's performance as required 295
under division (F) (15) of this section shall be considered a 296
meeting regarding the employment of the administrator. 297

Sec. 4121.121. (A) There is hereby created the bureau of 298
workers' compensation, which shall be administered by the 299
administrator of workers' compensation. A person appointed to 300
the position of administrator shall possess significant 301
management experience in effectively managing an organization or 302
organizations of substantial size and complexity. A person 303
appointed to the position of administrator also shall possess a 304
minimum of five years of experience in the field of workers' 305

compensation insurance or in another insurance industry, except 306
as otherwise provided when the conditions specified in division 307
(C) of this section are satisfied. The governor shall appoint 308
the administrator as provided in section 121.03 of the Revised 309
Code, and the administrator shall serve at the pleasure of the 310
governor. The governor shall fix the administrator's salary on 311
the basis of the administrator's experience and the 312
administrator's responsibilities and duties under this chapter 313
and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the 314
Revised Code. The governor shall not appoint to the position of 315
administrator any person who has, or whose spouse has, given a 316
contribution to the campaign committee of the governor in an 317
amount greater than one thousand dollars during the two-year 318
period immediately preceding the date of the appointment of the 319
administrator. 320

The administrator shall hold no other public office and 321
shall devote full time to the duties of administrator. Before 322
entering upon the duties of the office, the administrator shall 323
take an oath of office as required by sections 3.22 and 3.23 of 324
the Revised Code, and shall file in the office of the secretary 325
of state, a bond signed by the administrator and by surety 326
approved by the governor, for the sum of fifty thousand dollars 327
payable to the state, conditioned upon the faithful performance 328
of the administrator's duties. 329

(B) The administrator is responsible for the management of 330
the bureau and for the discharge of all administrative duties 331
imposed upon the administrator in this chapter and Chapters 332
4123., 4125., 4127., 4131., 4133., and 4167. of the Revised 333
Code, and in the discharge thereof shall do all of the 334
following: 335

(1) Perform all acts and exercise all authorities and powers, discretionary and otherwise that are required of or vested in the bureau or any of its employees in this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code, except the acts and the exercise of authority and power that is required of and vested in the bureau of workers' compensation board of directors or the industrial commission pursuant to those chapters. The treasurer of state shall honor all warrants signed by the administrator, or by one or more of the administrator's employees, authorized by the administrator in writing, or bearing the facsimile signature of the administrator or such employee under sections 4123.42 and 4123.44 of the Revised Code.

(2) Employ, direct, and supervise all employees required in connection with the performance of the duties assigned to the bureau by this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code, including an actuary, and may establish job classification plans and compensation for all employees of the bureau provided that this grant of authority shall not be construed as affecting any employee for whom the state employment relations board has established an appropriate bargaining unit under section 4117.06 of the Revised Code. All positions of employment in the bureau are in the classified civil service except those employees the administrator may appoint to serve at the administrator's pleasure in the unclassified civil service pursuant to section 124.11 of the Revised Code. The administrator shall fix the salaries of employees the administrator appoints to serve at the administrator's pleasure, including the chief operating officer, staff physicians, and other senior management personnel of the bureau and shall establish the compensation of staff attorneys

of the bureau's legal section and their immediate supervisors, 367
and take whatever steps are necessary to provide adequate 368
compensation for other staff attorneys. 369

The administrator may appoint a person who holds a 370
certified position in the classified service within the bureau 371
to a position in the unclassified service within the bureau. A 372
person appointed pursuant to this division to a position in the 373
unclassified service shall retain the right to resume the 374
position and status held by the person in the classified service 375
immediately prior to the person's appointment in the 376
unclassified service, regardless of the number of positions the 377
person held in the unclassified service. An employee's right to 378
resume a position in the classified service may only be 379
exercised when the administrator demotes the employee to a pay 380
range lower than the employee's current pay range or revokes the 381
employee's appointment to the unclassified service. An employee 382
who holds a position in the classified service and who is 383
appointed to a position in the unclassified service on or after 384
January 1, 2016, shall have the right to resume a position in 385
the classified service under this division only within five 386
years after the effective date of the employee's appointment in 387
the unclassified service. An employee forfeits the right to 388
resume a position in the classified service when the employee is 389
removed from the position in the unclassified service due to 390
incompetence, inefficiency, dishonesty, drunkenness, immoral 391
conduct, insubordination, discourteous treatment of the public, 392
neglect of duty, violation of this chapter or Chapter 124., 393
4123., 4125., 4127., 4131., 4133., or 4167. of the Revised Code, 394
violation of the rules of the director of administrative 395
services or the administrator, any other failure of good 396
behavior, any other acts of misfeasance, malfeasance, or 397

nonfeasance in office, or conviction of a felony while employed 398
in the civil service. An employee also forfeits the right to 399
resume a position in the classified service upon transfer to a 400
different agency. 401

Reinstatement to a position in the classified service 402
shall be to a position substantially equal to that position in 403
the classified service held previously, as certified by the 404
department of administrative services. If the position the 405
person previously held in the classified service has been placed 406
in the unclassified service or is otherwise unavailable, the 407
person shall be appointed to a position in the classified 408
service within the bureau that the director of administrative 409
services certifies is comparable in compensation to the position 410
the person previously held in the classified service. Service in 411
the position in the unclassified service shall be counted as 412
service in the position in the classified service held by the 413
person immediately prior to the person's appointment in the 414
unclassified service. When a person is reinstated to a position 415
in the classified service as provided in this division, the 416
person is entitled to all rights, status, and benefits accruing 417
to the position during the person's time of service in the 418
position in the unclassified service. 419

(3) Reorganize the work of the bureau, its sections, 420
departments, and offices to the extent necessary to achieve the 421
most efficient performance of its functions and to that end may 422
establish, change, or abolish positions and assign and reassign 423
duties and responsibilities of every employee of the bureau. All 424
persons employed by the commission in positions that, after 425
November 3, 1989, are supervised and directed by the 426
administrator under this section are transferred to the bureau 427
in their respective classifications but subject to reassignment 428

and reclassification of position and compensation as the 429
administrator determines to be in the interest of efficient 430
administration. The civil service status of any person employed 431
by the commission is not affected by this section. Personnel 432
employed by the bureau or the commission who are subject to 433
Chapter 4117. of the Revised Code shall retain all of their 434
rights and benefits conferred pursuant to that chapter as it 435
presently exists or is hereafter amended and nothing in this 436
chapter or Chapter 4123. of the Revised Code shall be construed 437
as eliminating or interfering with Chapter 4117. of the Revised 438
Code or the rights and benefits conferred under that chapter to 439
public employees or to any bargaining unit. 440

(4) Provide offices, equipment, supplies, and other 441
facilities for the bureau. 442

(5) Prepare and submit to the board information the 443
administrator considers pertinent or the board requires, 444
together with the administrator's recommendations, in the form 445
of administrative rules, for the advice and consent of the 446
board, for classifications of occupations or industries, for 447
premium rates and contributions, for the amount to be credited 448
to the surplus fund, for rules and systems of rating, rate 449
revisions, and merit rating. The administrator shall obtain, 450
prepare, and submit any other information the board requires for 451
the prompt and efficient discharge of its duties. 452

(6) Keep the accounts required by division (A) of section 453
4123.34 of the Revised Code and all other accounts and records 454
necessary to the collection, administration, and distribution of 455
the workers' compensation funds and shall obtain the statistical 456
and other information required by section 4123.19 of the Revised 457
Code. 458

(7) Exercise the investment powers vested in the 459
administrator by section 4123.44 of the Revised Code in 460
accordance with the investment policy approved by the board 461
pursuant to section 4121.12 of the Revised Code and in 462
consultation with the chief investment officer of the bureau of 463
workers' compensation. The administrator shall not engage in any 464
prohibited investment activity specified by the board pursuant 465
to division (F) (9) of section 4121.12 of the Revised Code and 466
shall not invest in any type of investment specified in 467
divisions (B) (1) to (10) of section 4123.442 of the Revised 468
Code. All business shall be transacted, all funds invested, all 469
warrants for money drawn and payments made, and all cash and 470
securities and other property held, in the name of the bureau, 471
or in the name of its nominee, provided that nominees are 472
authorized by the administrator solely for the purpose of 473
facilitating the transfer of securities, and restricted to the 474
administrator and designated employees. 475

(8) In accordance with Chapter 125. of the Revised Code, 476
purchase supplies, materials, equipment, and services. 477

(9) Prepare and submit to the board an annual budget for 478
internal operating purposes for the board's approval. The 479
administrator also shall, separately from the budget the 480
industrial commission submits, prepare and submit to the 481
director of budget and management a budget for each biennium. 482
The budgets submitted to the board and the director shall 483
include estimates of the costs and necessary expenditures of the 484
bureau in the discharge of any duty imposed by law. 485

(10) As promptly as possible in the course of efficient 486
administration, decentralize and relocate such of the personnel 487
and activities of the bureau as is appropriate to the end that 488

the receipt, investigation, determination, and payment of claims 489
may be undertaken at or near the place of injury or the 490
residence of the claimant and for that purpose establish 491
regional offices, in such places as the administrator considers 492
proper, capable of discharging as many of the functions of the 493
bureau as is practicable so as to promote prompt and efficient 494
administration in the processing of claims. All active and 495
inactive lost-time claims files shall be held at the service 496
office responsible for the claim. A claimant, at the claimant's 497
request, shall be provided with information by telephone as to 498
the location of the file pertaining to the claimant's claim. The 499
administrator shall ensure that all service office employees 500
report directly to the director for their service office. 501

(11) Provide a written binder on new coverage where the 502
administrator considers it to be in the best interest of the 503
risk. The administrator, or any other person authorized by the 504
administrator, shall grant the binder upon submission of a 505
request for coverage by the employer. A binder is effective for 506
a period of thirty days from date of issuance and is 507
nonrenewable. Payroll reports and premium charges shall coincide 508
with the effective date of the binder. 509

(12) Set standards for the reasonable and maximum handling 510
time of claims payment functions, ensure, by rules, the 511
impartial and prompt treatment of all claims and employer risk 512
accounts, and establish a secure, accurate method of time 513
stamping all incoming mail and documents hand delivered to 514
bureau employees. 515

(13) Ensure that all employees of the bureau follow the 516
orders and rules of the commission as such orders and rules 517
relate to the commission's overall adjudicatory policy-making 518

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| and management duties under this chapter and Chapters 4123., | 519 |
| 4127., and 4131. of the Revised Code. | 520 |
| (14) Manage and operate a data processing system with a | 521 |
| common data base for the use of both the bureau and the | 522 |
| commission and, in consultation with the commission, using | 523 |
| electronic data processing equipment, shall develop a claims | 524 |
| tracking system that is sufficient to monitor the status of a | 525 |
| claim at any time and that lists appeals that have been filed | 526 |
| and orders or determinations that have been issued pursuant to | 527 |
| section 4123.511 or 4123.512 of the Revised Code, including the | 528 |
| dates of such filings and issuances. | 529 |
| (15) Establish and maintain a medical section within the | 530 |
| bureau. The medical section shall do all of the following: | 531 |
| (a) Assist the administrator in establishing standard | 532 |
| medical fees, approving medical procedures, and determining | 533 |
| eligibility and reasonableness of the compensation payments for | 534 |
| medical, hospital, and nursing services, and in establishing | 535 |
| guidelines for payment policies which recognize usual, | 536 |
| customary, and reasonable methods of payment for covered | 537 |
| services; | 538 |
| (b) Provide a resource to respond to questions from claims | 539 |
| examiners for employees of the bureau; | 540 |
| (c) Audit fee bill payments; | 541 |
| (d) Implement a program to utilize, to the maximum extent | 542 |
| possible, electronic data processing equipment for storage of | 543 |
| information to facilitate authorizations of compensation | 544 |
| payments for medical, hospital, drug, and nursing services; | 545 |
| (e) Perform other duties assigned to it by the | 546 |
| administrator. | 547 |

(16) Appoint, as the administrator determines necessary, 548
panels to review and advise the administrator on disputes 549
arising over a determination that a health care service or 550
supply provided to a claimant is not covered under this chapter 551
or Chapter 4123., 4127., or 4131. of the Revised Code or is 552
medically unnecessary. If an individual health care provider is 553
involved in the dispute, the panel shall consist of individuals 554
licensed pursuant to the same section of the Revised Code as 555
such health care provider. 556

(17) Pursuant to section 4123.65 of the Revised Code, 557
approve applications for the final settlement of claims for 558
compensation or benefits under this chapter and Chapters 4123., 559
4127., and 4131. of the Revised Code as the administrator 560
determines appropriate, except in regard to the applications of 561
self-insuring employers and their employees. 562

(18) Comply with section 3517.13 of the Revised Code, and 563
except in regard to contracts entered into pursuant to the 564
authority contained in section 4121.44 of the Revised Code, 565
comply with the competitive bidding procedures set forth in the 566
Revised Code for all contracts into which the administrator 567
enters provided that those contracts fall within the type of 568
contracts and dollar amounts specified in the Revised Code for 569
competitive bidding and further provided that those contracts 570
are not otherwise specifically exempt from the competitive 571
bidding procedures contained in the Revised Code. 572

(19) Adopt, with the advice and consent of the board, 573
rules for the operation of the bureau. 574

(20) Prepare and submit to the board information the 575
administrator considers pertinent or the board requires, 576
together with the administrator's recommendations, in the form 577

of administrative rules, for the advice and consent of the 578
board, for the health partnership program and the qualified 579
health plan system, as provided in sections 4121.44, 4121.441, 580
and 4121.442 of the Revised Code. 581

(C) The administrator, with the advice and consent of the 582
senate, shall appoint a chief operating officer who has a 583
minimum of five years of experience in the field of workers' 584
compensation insurance or in another similar insurance industry 585
if the administrator does not possess such experience. The chief 586
operating officer shall not commence the chief operating 587
officer's duties until after the senate consents to the chief 588
operating officer's appointment. The chief operating officer 589
shall serve in the unclassified civil service of the state. 590

Sec. 4123.01. As used in this chapter: 591

(A) (1) "Employee" means: 592

(a) Every person in the service of the state, or of any 593
county, municipal corporation, township, or school district 594
therein, including regular members of lawfully constituted 595
police and fire departments of municipal corporations and 596
townships, whether paid or volunteer, and wherever serving 597
within the state or on temporary assignment outside thereof, and 598
executive officers of boards of education, under any appointment 599
or contract of hire, express or implied, oral or written, 600
including any elected official of the state, or of any county, 601
municipal corporation, or township, or members of boards of 602
education. 603

As used in division (A) (1) (a) of this section, the term 604
"employee" includes the following persons when responding to an 605
inherently dangerous situation that calls for an immediate 606

response on the part of the person, regardless of whether the 607
person is within the limits of the jurisdiction of the person's 608
regular employment or voluntary service when responding, on the 609
condition that the person responds to the situation as the 610
person otherwise would if the person were on duty in the 611
person's jurisdiction: 612

(i) Off-duty peace officers. As used in division (A) (1) (a) 613
(i) of this section, "peace officer" has the same meaning as in 614
section 2935.01 of the Revised Code. 615

(ii) Off-duty firefighters, whether paid or volunteer, of 616
a lawfully constituted fire department. 617

(iii) Off-duty first responders, emergency medical 618
technicians-basic, emergency medical technicians-intermediate, 619
or emergency medical technicians-paramedic, whether paid or 620
volunteer, of an ambulance service organization or emergency 621
medical service organization pursuant to Chapter 4765. of the 622
Revised Code. 623

(b) Every person in the service of any person, firm, or 624
private corporation, including any public service corporation, 625
that (i) employs one or more persons regularly in the same 626
business or in or about the same establishment under any 627
contract of hire, express or implied, oral or written, including 628
aliens and minors, household workers who earn one hundred sixty 629
dollars or more in cash in any calendar quarter from a single 630
household and casual workers who earn one hundred sixty dollars 631
or more in cash in any calendar quarter from a single employer, 632
or (ii) is bound by any such contract of hire or by any other 633
written contract, to pay into the state insurance fund the 634
premiums provided by this chapter. 635

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| (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: | 636 637 638 639 |
| (i) The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services; | 640 641 642 |
| (ii) The person is required by the other contracting party to have particular training; | 643 644 |
| (iii) The person's services are integrated into the regular functioning of the other contracting party; | 645 646 |
| (iv) The person is required to perform the work personally; | 647 648 |
| (v) The person is hired, supervised, or paid by the other contracting party; | 649 650 |
| (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; | 651 652 653 |
| (vii) The person's hours of work are established by the other contracting party; | 654 655 |
| (viii) The person is required to devote full time to the business of the other contracting party; | 656 657 |
| (ix) The person is required to perform the work on the premises of the other contracting party; | 658 659 |
| (x) The person is required to follow the order of work set by the other contracting party; | 660 661 |
| (xi) The person is required to make oral or written | 662 |

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| reports of progress to the other contracting party; | 663 |
| (xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly; | 664 665 |
| (xiii) The person's expenses are paid for by the other contracting party; | 666 667 |
| (xiv) The person's tools and materials are furnished by the other contracting party; | 668 669 |
| (xv) The person is provided with the facilities used to perform services; | 670 671 |
| (xvi) The person does not realize a profit or suffer a loss as a result of the services provided; | 672 673 |
| (xvii) The person is not performing services for a number of employers at the same time; | 674 675 |
| (xviii) The person does not make the same services available to the general public; | 676 677 |
| (xix) The other contracting party has a right to discharge the person; | 678 679 |
| (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. | 680 681 682 |
| Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or who is a self-insuring employer and who has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's | 683 684 685 686 687 688 689 |

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.

(d) Every person who operates a vehicle or vessel in the performance of services for or on behalf of a motor carrier transporting property, unless all of the following factors apply to the person:

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

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

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

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

(v) The person enters into a written contract with the

carrier for whom the person is performing the services that 719
describes the relationship between the person and the carrier to 720
be that of an independent contractor and not that of an 721
employee. 722

(vi) The person is responsible for substantially all of 723
the principal operating costs of the vehicle or vessel and 724
equipment used to provide the services, including maintenance, 725
fuel, repairs, supplies, vehicle or vessel insurance, and 726
personal expenses, except that the person may be paid by the 727
carrier the carrier's fuel surcharge and incidental costs, 728
including tolls, permits, and lumper fees. 729

(vii) The person is responsible for any economic loss or 730
economic gain from the arrangement with the carrier. 731

(2) "Employee" does not mean any of the following: 732

(a) A duly ordained, commissioned, or licensed minister or 733
assistant or associate minister of a church in the exercise of 734
ministry; 735

(b) Any officer of a family farm corporation; 736

(c) An individual incorporated as a corporation; 737

(d) An officer of a nonprofit corporation, as defined in 738
section 1702.01 of the Revised Code, who volunteers the person's 739
services as an officer; 740

(e) An individual who otherwise is an employee of an 741
employer but who signs the waiver and affidavit specified in 742
section 4123.15 of the Revised Code on the condition that the 743
administrator has granted a waiver and exception to the 744
individual's employer under section 4123.15 of the Revised Code; 745

(f) (i) A qualifying employee described in division (A) (14) 746

(a) of section 5703.94 of the Revised Code when the qualifying 747
employee is performing disaster work in this state during a 748
disaster response period pursuant to a qualifying solicitation 749
received by the employee's employer; 750

(ii) A qualifying employee described in division (A)(14) 751
(b) of section 5703.94 of the Revised Code when the qualifying 752
employee is performing disaster work in this state during a 753
disaster response period on critical infrastructure owned or 754
used by the employee's employer; 755

(iii) As used in division (A)(2)(f) of this section, 756
"critical infrastructure," "disaster response period," "disaster 757
work," and "qualifying employee" have the same meanings as in 758
section 5703.94 of the Revised Code. 759

Any employer may elect to include as an "employee" within 760
this chapter, any person excluded from the definition of 761
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), 762
(c), or (e) of this section in accordance with rules adopted by 763
the administrator, with the advice and consent of the bureau of 764
workers' compensation board of directors. If an employer is a 765
partnership, sole proprietorship, individual incorporated as a 766
corporation, or family farm corporation, such employer may elect 767
to include as an "employee" within this chapter, any member of 768
such partnership, the owner of the sole proprietorship, the 769
individual incorporated as a corporation, or the officers of the 770
family farm corporation. Nothing in this section shall prohibit 771
a partner, sole proprietor, or any person excluded from the 772
definition of "employee" pursuant to division (A)(2)(a), (b), 773
(c), or (e) of this section from electing to be included as an 774
"employee" under this chapter in accordance with rules adopted 775
by the administrator, with the advice and consent of the board. 776

In the event of an election, the employer or person 777
electing coverage shall serve upon the bureau of workers' 778
compensation written notice naming the person to be covered and 779
include the person's remuneration for premium purposes in all 780
future payroll reports. No partner, sole proprietor, or person 781
excluded from the definition of "employee" pursuant to division 782
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall 783
receive benefits or compensation under this chapter until the 784
bureau receives written notice of the election permitted by this 785
section. 786

For informational purposes only, the bureau shall 787
prescribe such language as it considers appropriate, on such of 788
its forms as it considers appropriate, to advise employers of 789
their right to elect to include as an "employee" within this 790
chapter a sole proprietor, any member of a partnership, or a 791
person excluded from the definition of "employee" under division 792
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that 793
they should check any health and disability insurance policy, or 794
other form of health and disability plan or contract, presently 795
covering them, or the purchase of which they may be considering, 796
to determine whether such policy, plan, or contract excludes 797
benefits for illness or injury that they might have elected to 798
have covered by workers' compensation. 799

(B) (1) "Employer" means: 800

(a) The state, including state hospitals, each county, 801
municipal corporation, township, school district, and hospital 802
owned by a political subdivision or subdivisions other than the 803
state; 804

(b) Every person, firm, professional employer 805
organization, alternate employer organization, and private 806

corporation, including any public service corporation, that (i) 807
has in service one or more employees or shared employees 808
regularly in the same business or in or about the same 809
establishment under any contract of hire, express or implied, 810
oral or written, or (ii) is bound by any such contract of hire 811
or by any other written contract, to pay into the insurance fund 812
the premiums provided by this chapter. 813

All such employers are subject to this chapter. Any member 814
of a firm or association, who regularly performs manual labor in 815
or about a mine, factory, or other establishment, including a 816
household establishment, shall be considered an employee in 817
determining whether such person, firm, or private corporation, 818
or public service corporation, has in its service, one or more 819
employees and the employer shall report the income derived from 820
such labor to the bureau as part of the payroll of such 821
employer, and such member shall thereupon be entitled to all the 822
benefits of an employee. 823

(2) "Employer" does not include a franchisor with respect 824
to the franchisor's relationship with a franchisee or an 825
employee of a franchisee, unless the franchisor agrees to assume 826
that role in writing or a court of competent jurisdiction 827
determines that the franchisor exercises a type or degree of 828
control over the franchisee or the franchisee's employees that 829
is not customarily exercised by a franchisor for the purpose of 830
protecting the franchisor's trademark, brand, or both. For 831
purposes of this division, "franchisor" and "franchisee" have 832
the same meanings as in 16 C.F.R. 436.1. 833

(C) "Injury" includes any injury, whether caused by 834
external accidental means or accidental in character and result, 835
received in the course of, and arising out of, the injured 836

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| employee's employment. "Injury" does not include: | 837 |
| (1) Psychiatric conditions except where the claimant's psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate; | 838 839 840 841 842 843 |
| (2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body; | 844 845 |
| (3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity; | 846 847 848 849 850 |
| (4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation. | 851 852 853 854 855 856 857 858 859 |
| (D) "Child" includes a posthumous child and a child legally adopted prior to the injury. | 860 861 |
| (E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouse of persons related to | 862 863 864 865 |

each other within the fourth degree of kinship, according to the 866
rules of the civil law, and at least one of the related persons 867
is residing on or actively operating the farm, and none of whose 868
stockholders are a corporation. A family farm corporation does 869
not cease to qualify under this division where, by reason of any 870
devise, bequest, or the operation of the laws of descent or 871
distribution, the ownership of shares of voting stock is 872
transferred to another person, as long as that person is within 873
the degree of kinship stipulated in this division. 874

(F) "Occupational disease" means a disease contracted in 875
the course of employment, which by its causes and the 876
characteristics of its manifestation or the condition of the 877
employment results in a hazard which distinguishes the 878
employment in character from employment generally, and the 879
employment creates a risk of contracting the disease in greater 880
degree and in a different manner from the public in general. 881

(G) "Self-insuring employer" means an employer who is 882
granted the privilege of paying compensation and benefits 883
directly under section 4123.35 of the Revised Code, including a 884
board of county commissioners for the sole purpose of 885
constructing a sports facility as defined in section 307.696 of 886
the Revised Code, provided that the electors of the county in 887
which the sports facility is to be built have approved 888
construction of a sports facility by ballot election no later 889
than November 6, 1997. 890

(H) "Private employer" means an employer as defined in 891
division (B) (1) (b) of this section. 892

(I) "Professional employer organization" has the same 893
meaning as in section 4125.01 of the Revised Code. 894

(J) "Public employer" means an employer as defined in 895
division (B) (1) (a) of this section. 896

(K) "Sexual conduct" means vaginal intercourse between a 897
male and female; anal intercourse, fellatio, and cunnilingus 898
between persons regardless of gender; and, without privilege to 899
do so, the insertion, however slight, of any part of the body or 900
any instrument, apparatus, or other object into the vaginal or 901
anal cavity of another. Penetration, however slight, is 902
sufficient to complete vaginal or anal intercourse. 903

(L) "Other-states' insurer" means an insurance company 904
that is authorized to provide workers' compensation insurance 905
coverage in any of the states that permit employers to obtain 906
insurance for workers' compensation claims through insurance 907
companies. 908

(M) "Other-states' coverage" means both of the following: 909

(1) Insurance coverage secured by an eligible employer for 910
workers' compensation claims of employees who are in employment 911
relationships localized in a state other than this state or 912
those employees' dependents; 913

(2) Insurance coverage secured by an eligible employer for 914
workers' compensation claims that arise in a state other than 915
this state where an employer elects to obtain coverage through 916
either the administrator or an other-states' insurer. 917

(N) "Limited other-states coverage" means insurance 918
coverage provided by the administrator to an eligible employer 919
for workers' compensation claims of employees who are in an 920
employment relationship localized in this state but are 921
temporarily working in a state other than this state, or those 922
employees' dependents. 923

(O) "Motor carrier" has the same meaning as in section 924
4923.01 of the Revised Code. 925

(P) "Alternate employer organization" has the same meaning 926
as in section 4133.01 of the Revised Code. 927

Sec. 4123.26. (A) Every employer shall keep records of, 928
and furnish to the bureau of workers' compensation upon request, 929
all information required by the administrator of workers' 930
compensation to carry out this chapter. 931

(B) Except as otherwise provided in division (C) of this 932
section, every private employer employing one or more employees 933
regularly in the same business, or in or about the same 934
establishment, shall submit a payroll report to the bureau. 935
Until the policy year commencing July 1, 2015, a private 936
employer shall submit the payroll report in January of each 937
year. For a policy year commencing on or after July 1, 2015, the 938
employer shall submit the payroll report on or before August 939
fifteenth of each year unless otherwise specified by the 940
administrator in rules the administrator adopts. The employer 941
shall include all of the following information in the payroll 942
report, as applicable: 943

(1) For payroll reports submitted prior to July 1, 2015, 944
the number of employees employed during the preceding year from 945
the first day of January through the thirty-first day of 946
December who are localized in this state; 947

(2) For payroll reports submitted on or after July 1, 948
2015, the number of employees localized in this state employed 949
during the preceding policy year from the first day of July 950
through the thirtieth day of June; 951

(3) The number of such employees localized in this state 952

employed at each kind of employment and the aggregate amount of 953
wages paid to such employees; 954

(4)~~(a)~~ If an employer elects to secure other-states' 955
coverage or limited other-states' coverage pursuant to section 956
4123.292 of the Revised Code through either the administrator, 957
if the administrator elects to offer such coverage, or an other- 958
states' insurer the information required under divisions (B)(1) 959
to (3) of this section and any additional information required 960
by the administrator in rules the administrator adopts, with the 961
advice and consent of the bureau of workers' compensation board 962
of directors, to allow the employer to secure other-states' 963
coverage or limited other-states' coverage. 964

(5) (a) In accordance with the rules adopted by the 965
administrator pursuant to division (C) of section 4123.32 of the 966
Revised Code, if the employer employs employees who are covered 967
under the federal "Longshore and Harbor Workers' Compensation 968
Act," 98 Stat. 1639, 33 U.S.C. 901 et seq., and under this 969
chapter and Chapter 4121. of the Revised Code, both of the 970
following amounts: 971

(i) The amount of wages the employer pays to those 972
employees when the employees perform labor and provide services 973
for which the employees are eligible to receive compensation and 974
benefits under the federal "Longshore and Harbor Workers' 975
Compensation Act"; 976

(ii) The amount of wages the employer pays to those 977
employees when the employees perform labor and provide services 978
for which the employees are eligible to receive compensation and 979
benefits under this chapter and Chapter 4121. of the Revised 980
Code. 981

(b) The allocation of wages identified by the employer 982
pursuant to divisions (B) (5) (a) (i) and (ii) of this section 983
shall not be presumed to be an indication of the law under which 984
an employee is eligible to receive compensation and benefits. 985

(C) ~~Beginning August 1, 2015, each~~ Each employer that is 986
recognized by the administrator as a professional employer 987
organization or alternate employer organization shall submit a 988
monthly payroll report containing the number of employees 989
employed during the preceding calendar month, the number of 990
those employees employed at each kind of employment, and the 991
aggregate amount of wages paid to those employees. 992

(D) An employer described in division (B) of this section 993
shall submit the payroll report required under this section to 994
the bureau on a form prescribed by the bureau. The bureau may 995
require that the information required to be furnished be 996
verified under oath. The bureau or any person employed by the 997
bureau for that purpose, may examine, under oath, any employer, 998
or the officer, agent, or employee thereof, for the purpose of 999
ascertaining any information which the employer is required to 1000
furnish to the bureau. 1001

(E) No private employer shall fail to furnish to the 1002
bureau the payroll report required by this section, nor shall 1003
any employer fail to keep records of or furnish such other 1004
information as may be required by the bureau under this section. 1005

(F) The administrator may adopt rules setting forth 1006
penalties for failure to submit the payroll report required by 1007
this section, including but not limited to exclusion from 1008
alternative rating plans and discount programs. 1009

Sec. 4123.291. (A) An adjudicating committee appointed by 1010

the administrator of workers' compensation to hear any matter 1011
specified in divisions (B) (1) to (7) of this section shall hear 1012
the matter within sixty days of the date on which an employer 1013
files the request, protest, or petition. An employer desiring to 1014
file a request, protest, or petition regarding any matter 1015
specified in divisions (B) (1) to (7) of this section shall file 1016
the request, protest, or petition to the adjudicating committee 1017
on or before twenty-four months after the administrator sends 1018
notice of the determination about which the employer is filing 1019
the request, protest, or petition. 1020

(B) An employer who is adversely affected by a decision of 1021
an adjudicating committee appointed by the administrator may 1022
appeal the decision of the committee to the administrator or the 1023
administrator's designee. The employer shall file the appeal in 1024
writing within thirty days after the employer receives the 1025
decision of the adjudicating committee. Except as otherwise 1026
provided in this division, the administrator or the designee 1027
shall hold a hearing and consider and issue a decision on the 1028
appeal if the decision of the adjudicating committee relates to 1029
one of the following: 1030

(1) An employer request for a waiver of a default in the 1031
payment of premiums pursuant to section 4123.37 of the Revised 1032
Code; 1033

(2) An employer request for the settlement of liability as 1034
a noncomplying employer under section 4123.75 of the Revised 1035
Code; 1036

(3) An employer petition objecting to an assessment made 1037
pursuant to section 4123.37 of the Revised Code and the rules 1038
adopted pursuant to that section; 1039

(4) An employer request for the abatement of penalties 1040
assessed pursuant to section 4123.32 of the Revised Code and the 1041
rules adopted pursuant to that section; 1042

(5) An employer protest relating to an audit finding or a 1043
determination of a manual classification, experience rating, or 1044
transfer or combination of risk experience; 1045

(6) Any decision relating to any other risk premium matter 1046
under Chapters 4121., 4123., and 4131. of the Revised Code; 1047

(7) An employer petition objecting to the amount of 1048
security required under division (D) of section 4125.05 of the 1049
Revised Code and the rules adopted pursuant to that section or 1050
under division (D) of section 4133.07 of the Revised Code and 1051
the rules adopted pursuant to that section. 1052

An employer may request, in writing, that the 1053
administrator waive the hearing before the administrator or the 1054
administrator's designee. The administrator shall decide whether 1055
to grant or deny a request to waive a hearing. 1056

(C) The bureau of workers' compensation board of 1057
directors, based upon recommendations of the workers' 1058
compensation actuarial committee, shall establish the policy for 1059
all adjudicating committee procedures, including, but not 1060
limited to, specific criteria for manual premium rate 1061
adjustment. 1062

Sec. 4123.32. The administrator of workers' compensation, 1063
with the advice and consent of the bureau of workers' 1064
compensation board of directors, shall adopt rules with respect 1065
to the collection, maintenance, and disbursements of the state 1066
insurance fund including all of the following: 1067

(A) A rule providing for ascertaining the correctness of 1068

any employer's report of estimated or actual expenditure of 1069
wages and the determination and adjustment of proper premiums 1070
and the payment of those premiums by the employer; 1071

(B) Such special rules as the administrator considers 1072
necessary to safeguard the fund and that are just in the 1073
circumstances, covering the rates to be applied where one 1074
employer takes over the occupation or industry of another or 1075
where an employer first makes application for state insurance, 1076
and the administrator may require that if any employer transfers 1077
a business in whole or in part or otherwise reorganizes the 1078
business, the successor in interest shall assume, in proportion 1079
to the extent of the transfer, as determined by the 1080
administrator, the employer's account and shall continue the 1081
payment of all contributions due under this chapter; 1082

(C) A rule providing that an employer who employs an 1083
employee covered under the federal "Longshore and Harbor 1084
Workers' Compensation Act," 98 Stat. 1639, 33 U.S.C. 901 et 1085
seq., and this chapter and Chapter 4121. of the Revised Code 1086
shall be assessed a premium in accordance with the expenditure 1087
of wages, payroll, or both attributable to only labor performed 1088
and services provided by such an employee when the employee 1089
performs labor and provides services for which the employee is 1090
not eligible to receive compensation and benefits under that 1091
federal act. 1092

(D) A rule providing for all of the following: 1093

(1) If an employer fails to file a report of the 1094
employer's actual payroll expenditures pursuant to section 1095
4123.26 of the Revised Code for private employers or pursuant to 1096
section 4123.41 of the Revised Code for public employers, the 1097
premium and assessments due from the employer for the period 1098

shall be calculated based on the estimated payroll of the 1099
employer used in calculating the estimated premium due, 1100
increased by ten per cent; 1101

(2) (a) If an employer fails to pay the premium or 1102
assessments when due for a policy year commencing prior to July 1103
1, 2015, the administrator may add a late fee penalty of not 1104
more than thirty dollars to the premium plus an additional 1105
penalty amount as follows: 1106

(i) For a premium from sixty-one to ninety days past due, 1107
the prime interest rate, multiplied by the premium due; 1108

(ii) For a premium from ninety-one to one hundred twenty 1109
days past due, the prime interest rate plus two per cent, 1110
multiplied by the premium due; 1111

(iii) For a premium from one hundred twenty-one to one 1112
hundred fifty days past due, the prime interest rate plus four 1113
per cent, multiplied by the premium due; 1114

(iv) For a premium from one hundred fifty-one to one 1115
hundred eighty days past due, the prime interest rate plus six 1116
per cent, multiplied by the premium due; 1117

(v) For a premium from one hundred eighty-one to two 1118
hundred ten days past due, the prime interest rate plus eight 1119
per cent, multiplied by the premium due; 1120

(vi) For each additional thirty-day period or portion 1121
thereof that a premium remains past due after it has remained 1122
past due for more than two hundred ten days, the prime interest 1123
rate plus eight per cent, multiplied by the premium due. 1124

(b) For purposes of division (D) (2) (a) of this section, 1125
"prime interest rate" means the average bank prime rate, and the 1126

administrator shall determine the prime interest rate in the 1127
same manner as a county auditor determines the average bank 1128
prime rate under section 929.02 of the Revised Code. 1129

(c) If an employer fails to pay the premium or assessments 1130
when due for a policy year commencing on or after July 1, 2015, 1131
the administrator may assess a penalty at the interest rate 1132
established by the state tax commissioner pursuant to section 1133
5703.47 of the Revised Code. 1134

(3) Notwithstanding the interest rates specified in 1135
division (D) (2) (a) or (c) of this section, at no time shall the 1136
additional penalty amount assessed under division (D) (2) (a) or 1137
(c) of this section exceed fifteen per cent of the premium due. 1138

(4) If an employer recognized by the administrator as a 1139
professional employer organization or alternate employer 1140
organization fails to make a timely payment of premiums or 1141
assessments as required by section 4123.35 of the Revised Code, 1142
the administrator shall revoke the ~~professional employer~~ 1143
organization's registration pursuant to section 4125.06 or 1144
4133.09 of the Revised Code, as applicable. 1145

(5) An employer may appeal a late fee penalty or 1146
additional penalty to an adjudicating committee pursuant to 1147
section 4123.291 of the Revised Code. 1148

(6) If the employer files an appropriate payroll report 1149
within the time provided by law, the employer shall not be in 1150
default and division (D) (2) of this section shall not apply if 1151
the employer pays the premiums within fifteen days after being 1152
first notified by the administrator of the amount due. 1153

(7) Any deficiencies in the amounts of the premium 1154
security deposit paid by an employer prior to July 1, 2015, 1155

shall be subject to an interest charge of six per cent per annum 1156
from the date the premium obligation is incurred. In determining 1157
the interest due on deficiencies in premium security deposit 1158
payments, a charge in each case shall be made against the 1159
employer in an amount equal to interest at the rate of six per 1160
cent per annum on the premium security deposit due but remaining 1161
unpaid sixty days after notice by the administrator. 1162

(8) Any interest charges or penalties provided for in 1163
divisions (D) (2) and (7) of this section shall be credited to 1164
the employer's account for rating purposes in the same manner as 1165
premiums. 1166

(E) A rule providing that each employer, on the occasion 1167
of instituting coverage under this chapter for an effective date 1168
prior to July 1, 2015, shall submit a premium security deposit. 1169
The deposit shall be calculated equivalent to thirty per cent of 1170
the semiannual premium obligation of the employer based upon the 1171
employer's estimated expenditure for wages for the ensuing six- 1172
month period plus thirty per cent of an additional adjustment 1173
period of two months but only up to a maximum of one thousand 1174
dollars and not less than ten dollars. The administrator shall 1175
review the security deposit of every employer who has submitted 1176
a deposit which is less than the one-thousand-dollar maximum. 1177
The administrator may require any such employer to submit 1178
additional money up to the maximum of one thousand dollars that, 1179
in the administrator's opinion, reflects the employer's current 1180
payroll expenditure for an eight-month period. 1181

(F) A rule providing that each employer, on the occasion 1182
of instituting coverage under this chapter, shall submit an 1183
application fee and an application for coverage that completely 1184
provides all of the information required for the administrator 1185

to establish coverage for that employer, and that the employer's 1186
failure to pay the application fee or to provide all of the 1187
information requested on the application may be grounds for the 1188
administrator to deny coverage for that employer. 1189

(G) A rule providing that, in addition to any other 1190
remedies permitted in this chapter, the administrator may 1191
discontinue an employer's coverage if the employer fails to pay 1192
the premium due on or before the premium's due date. 1193

(H) A rule providing that if after a final adjudication it 1194
is determined that an employer has failed to pay an obligation, 1195
billing, account, or assessment that is greater than one 1196
thousand dollars on or before its due date, the administrator 1197
may discontinue the employer's coverage in addition to any other 1198
remedies permitted in this chapter, and that the administrator 1199
shall not discontinue an employer's coverage pursuant to this 1200
division prior to a final adjudication regarding the employer's 1201
failure to pay such obligation, billing, account, or assessment 1202
on or before its due date. 1203

(I) As used in divisions (G) and (H) of this section: 1204

(1) "Employer" has the same meaning as in section 4123.01 1205
of the Revised Code except that "employer" does not include the 1206
state, a state hospital, or a state university or college. 1207

(2) "State university or college" has the same meaning as 1208
in section 3345.12 of the Revised Code and also includes the 1209
Ohio agricultural research and development center and OSU 1210
extension. 1211

(3) "State hospital" means the Ohio state university 1212
hospital and its ancillary facilities and the medical university 1213
of Ohio at Toledo hospital. 1214

Sec. 4123.341. The administrative costs of the industrial 1215
commission, the bureau of workers' compensation board of 1216
directors, and the bureau of workers' compensation shall be 1217
those costs and expenses that are incident to the discharge of 1218
the duties and performance of the activities of the industrial 1219
commission, the board, and the bureau under this chapter and 1220
Chapters 4121., 4125., 4127., 4131., 4133., and 4167. of the 1221
Revised Code, and all such costs shall be borne by the state and 1222
by other employers amenable to this chapter as follows: 1223

(A) In addition to the contribution required of the state 1224
under sections 4123.39 and 4123.40 of the Revised Code, the 1225
state shall contribute the sum determined to be necessary under 1226
section 4123.342 of the Revised Code. 1227

(B) The director of budget and management may allocate the 1228
state's share of contributions in the manner the director finds 1229
most equitably apportions the costs. 1230

(C) The counties and taxing districts therein shall 1231
contribute such sum as may be required under section 4123.342 of 1232
the Revised Code. 1233

(D) The private employers shall contribute the sum 1234
required under section 4123.342 of the Revised Code. 1235

Sec. 4123.35. (A) Except as provided in this section, and 1236
until the policy year commencing July 1, 2015, every private 1237
employer and every publicly owned utility shall pay semiannually 1238
in the months of January and July into the state insurance fund 1239
the amount of annual premium the administrator of workers' 1240
compensation fixes for the employment or occupation of the 1241
employer, the amount of which premium to be paid by each 1242
employer to be determined by the classifications, rules, and 1243

rates made and published by the administrator. The employer 1244
shall pay semiannually a further sum of money into the state 1245
insurance fund as may be ascertained to be due from the employer 1246
by applying the rules of the administrator. 1247

Except as otherwise provided in this section, for a policy 1248
year commencing on or after July 1, 2015, every private employer 1249
and every publicly owned utility shall pay annually in the month 1250
of June immediately preceding the policy year into the state 1251
insurance fund the amount of estimated annual premium the 1252
administrator fixes for the employment or occupation of the 1253
employer, the amount of which estimated premium to be paid by 1254
each employer to be determined by the classifications, rules, 1255
and rates made and published by the administrator. The employer 1256
shall pay a further sum of money into the state insurance fund 1257
as may be ascertained to be due from the employer by applying 1258
the rules of the administrator. Upon receipt of the payroll 1259
report required by division (B) of section 4123.26 of the 1260
Revised Code, the administrator shall adjust the premium and 1261
assessments charged to each employer for the difference between 1262
estimated gross payrolls and actual gross payrolls, and any 1263
balance due to the administrator shall be immediately paid by 1264
the employer. Any balance due the employer shall be credited to 1265
the employer's account. 1266

For a policy year commencing on or after July 1, 2015, 1267
each employer that is recognized by the administrator as a 1268
professional employer organization or alternate employer 1269
organization shall pay monthly into the state insurance fund the 1270
amount of premium the administrator fixes for the employer for 1271
the prior month based on the actual payroll of the employer 1272
reported pursuant to division (C) of section 4123.26 of the 1273
Revised Code. 1274

A receipt certifying that payment has been made shall be 1275
issued to the employer by the bureau of workers' compensation. 1276
The receipt is prima-facie evidence of the payment of the 1277
premium. The administrator shall provide each employer written 1278
proof of workers' compensation coverage as is required in 1279
section 4123.83 of the Revised Code. Proper posting of the 1280
notice constitutes the employer's compliance with the notice 1281
requirement mandated in section 4123.83 of the Revised Code. 1282

The bureau shall verify with the secretary of state the 1283
existence of all corporations and organizations making 1284
application for workers' compensation coverage and shall require 1285
every such application to include the employer's federal 1286
identification number. 1287

A private employer who has contracted with a subcontractor 1288
is liable for the unpaid premium due from any subcontractor with 1289
respect to that part of the payroll of the subcontractor that is 1290
for work performed pursuant to the contract with the employer. 1291

Division (A) of this section providing for the payment of 1292
premiums semiannually does not apply to any employer who was a 1293
subscriber to the state insurance fund prior to January 1, 1914, 1294
or, until July 1, 2015, who may first become a subscriber to the 1295
fund in any month other than January or July. Instead, the 1296
semiannual premiums shall be paid by those employers from time 1297
to time upon the expiration of the respective periods for which 1298
payments into the fund have been made by them. After July 1, 1299
2015, an employer who first becomes a subscriber to the fund on 1300
any day other than the first day of July shall pay premiums 1301
according to rules adopted by the administrator, with the advice 1302
and consent of the bureau of workers' compensation board of 1303
directors, for the remainder of the policy year for which the 1304

coverage is effective. 1305

The administrator, with the advice and consent of the 1306
board, shall adopt rules to permit employers to make periodic 1307
payments of the premium and assessment due under this division. 1308
The rules shall include provisions for the assessment of 1309
interest charges, where appropriate, and for the assessment of 1310
penalties when an employer fails to make timely premium 1311
payments. The administrator, in the rules the administrator 1312
adopts, may set an administrative fee for these periodic 1313
payments. An employer who timely pays the amounts due under this 1314
division is entitled to all of the benefits and protections of 1315
this chapter. Upon receipt of payment, the bureau shall issue a 1316
receipt to the employer certifying that payment has been made, 1317
which receipt is prima-facie evidence of payment. Workers' 1318
compensation coverage under this chapter continues uninterrupted 1319
upon timely receipt of payment under this division. 1320

Every public employer, except public employers that are 1321
self-insuring employers under this section, shall comply with 1322
sections 4123.38 to 4123.41, and 4123.48 of the Revised Code in 1323
regard to the contribution of moneys to the public insurance 1324
fund. 1325

(B) Employers who will abide by the rules of the 1326
administrator and who may be of sufficient financial ability to 1327
render certain the payment of compensation to injured employees 1328
or the dependents of killed employees, and the furnishing of 1329
medical, surgical, nursing, and hospital attention and services 1330
and medicines, and funeral expenses, equal to or greater than is 1331
provided for in sections 4123.52, 4123.55 to 4123.62, and 1332
4123.64 to 4123.67 of the Revised Code, and who do not desire to 1333
insure the payment thereof or indemnify themselves against loss 1334

sustained by the direct payment thereof, upon a finding of such 1335
facts by the administrator, may be granted the privilege to pay 1336
individually compensation, and furnish medical, surgical, 1337
nursing, and hospital services and attention and funeral 1338
expenses directly to injured employees or the dependents of 1339
killed employees, thereby being granted status as a self- 1340
insuring employer. The administrator may charge employers who 1341
apply for the status as a self-insuring employer a reasonable 1342
application fee to cover the bureau's costs in connection with 1343
processing and making a determination with respect to an 1344
application. 1345

All employers granted status as self-insuring employers 1346
shall demonstrate sufficient financial and administrative 1347
ability to assure that all obligations under this section are 1348
promptly met. The administrator shall deny the privilege where 1349
the employer is unable to demonstrate the employer's ability to 1350
promptly meet all the obligations imposed on the employer by 1351
this section. 1352

(1) The administrator shall consider, but is not limited 1353
to, the following factors, where applicable, in determining the 1354
employer's ability to meet all of the obligations imposed on the 1355
employer by this section: 1356

(a) The employer has operated in this state for a minimum 1357
of two years, provided that an employer who has purchased, 1358
acquired, or otherwise succeeded to the operation of a business, 1359
or any part thereof, situated in this state that has operated 1360
for at least two years in this state, also shall qualify; 1361

(b) Where the employer previously contributed to the state 1362
insurance fund or is a successor employer as defined by bureau 1363
rules, the amount of the buyout, as defined by bureau rules; 1364

(c) The sufficiency of the employer's assets located in 1365
this state to insure the employer's solvency in paying 1366
compensation directly; 1367

(d) The financial records, documents, and data, certified 1368
by a certified public accountant, necessary to provide the 1369
employer's full financial disclosure. The records, documents, 1370
and data include, but are not limited to, balance sheets and 1371
profit and loss history for the current year and previous four 1372
years. 1373

(e) The employer's organizational plan for the 1374
administration of the workers' compensation law; 1375

(f) The employer's proposed plan to inform employees of 1376
the change from a state fund insurer to a self-insuring 1377
employer, the procedures the employer will follow as a self- 1378
insuring employer, and the employees' rights to compensation and 1379
benefits; and 1380

(g) The employer has either an account in a financial 1381
institution in this state, or if the employer maintains an 1382
account with a financial institution outside this state, ensures 1383
that workers' compensation checks are drawn from the same 1384
account as payroll checks or the employer clearly indicates that 1385
payment will be honored by a financial institution in this 1386
state. 1387

The administrator may waive the requirements of division 1388
(B) (1) (a) of this section and the requirement of division (B) (1) 1389
(d) of this section that the financial records, documents, and 1390
data be certified by a certified public accountant. The 1391
administrator shall adopt rules establishing the criteria that 1392
an employer shall meet in order for the administrator to waive 1393

the requirements of divisions (B) (1) (a) and (d) of this section. 1394
Such rules may require additional security of that employer 1395
pursuant to division (E) of section 4123.351 of the Revised 1396
Code. 1397

The administrator shall not grant the status of self- 1398
insuring employer to the state, except that the administrator 1399
may grant the status of self-insuring employer to a state 1400
institution of higher education, including its hospitals, that 1401
meets the requirements of division (B) (2) of this section. 1402

(2) When considering the application of a public employer, 1403
except for a board of county commissioners described in division 1404
(G) of section 4123.01 of the Revised Code, a board of a county 1405
hospital, or a publicly owned utility, the administrator shall 1406
verify that the public employer satisfies all of the following 1407
requirements as the requirements apply to that public employer: 1408

(a) For the two-year period preceding application under 1409
this section, the public employer has maintained an unvoted debt 1410
capacity equal to at least two times the amount of the current 1411
annual premium established by the administrator under this 1412
chapter for that public employer for the year immediately 1413
preceding the year in which the public employer makes 1414
application under this section. 1415

(b) For each of the two fiscal years preceding application 1416
under this section, the unreserved and undesignated year-end 1417
fund balance in the public employer's general fund is equal to 1418
at least five per cent of the public employer's general fund 1419
revenues for the fiscal year computed in accordance with 1420
generally accepted accounting principles. 1421

(c) For the five-year period preceding application under 1422

this section, the public employer, to the extent applicable, has 1423
complied fully with the continuing disclosure requirements 1424
established in rules adopted by the United States securities and 1425
exchange commission under 17 C.F.R. 240.15c 2-12. 1426

(d) For the five-year period preceding application under 1427
this section, the public employer has not had its local 1428
government fund distribution withheld on account of the public 1429
employer being indebted or otherwise obligated to the state. 1430

(e) For the five-year period preceding application under 1431
this section, the public employer has not been under a fiscal 1432
watch or fiscal emergency pursuant to section 118.023, 118.04, 1433
or 3316.03 of the Revised Code. 1434

(f) For the public employer's fiscal year preceding 1435
application under this section, the public employer has obtained 1436
an annual financial audit as required under section 117.10 of 1437
the Revised Code, which has been released by the auditor of 1438
state within seven months after the end of the public employer's 1439
fiscal year. 1440

(g) On the date of application, the public employer holds 1441
a debt rating of Aa3 or higher according to Moody's investors 1442
service, inc., or a comparable rating by an independent rating 1443
agency similar to Moody's investors service, inc. 1444

(h) The public employer agrees to generate an annual 1445
accumulating book reserve in its financial statements reflecting 1446
an actuarially generated reserve adequate to pay projected 1447
claims under this chapter for the applicable period of time, as 1448
determined by the administrator. 1449

(i) For a public employer that is a hospital, the public 1450
employer shall submit audited financial statements showing the 1451

hospital's overall liquidity characteristics, and the 1452
administrator shall determine, on an individual basis, whether 1453
the public employer satisfies liquidity standards equivalent to 1454
the liquidity standards of other public employers. 1455

(j) Any additional criteria that the administrator adopts 1456
by rule pursuant to division (E) of this section. 1457

The administrator may adopt rules establishing the 1458
criteria that a public employer shall satisfy in order for the 1459
administrator to waive any of the requirements listed in 1460
divisions (B) (2) (a) to (j) of this section. The rules may 1461
require additional security from that employer pursuant to 1462
division (E) of section 4123.351 of the Revised Code. The 1463
administrator shall not waive any of the requirements listed in 1464
divisions (B) (2) (a) to (j) of this section for a public employer 1465
who does not satisfy the criteria established in the rules the 1466
administrator adopts. 1467

(C) A board of county commissioners described in division 1468
(G) of section 4123.01 of the Revised Code, as an employer, that 1469
will abide by the rules of the administrator and that may be of 1470
sufficient financial ability to render certain the payment of 1471
compensation to injured employees or the dependents of killed 1472
employees, and the furnishing of medical, surgical, nursing, and 1473
hospital attention and services and medicines, and funeral 1474
expenses, equal to or greater than is provided for in sections 1475
4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the 1476
Revised Code, and that does not desire to insure the payment 1477
thereof or indemnify itself against loss sustained by the direct 1478
payment thereof, upon a finding of such facts by the 1479
administrator, may be granted the privilege to pay individually 1480
compensation, and furnish medical, surgical, nursing, and 1481

hospital services and attention and funeral expenses directly to 1482
injured employees or the dependents of killed employees, thereby 1483
being granted status as a self-insuring employer. The 1484
administrator may charge a board of county commissioners 1485
described in division (G) of section 4123.01 of the Revised Code 1486
that applies for the status as a self-insuring employer a 1487
reasonable application fee to cover the bureau's costs in 1488
connection with processing and making a determination with 1489
respect to an application. All employers granted such status 1490
shall demonstrate sufficient financial and administrative 1491
ability to assure that all obligations under this section are 1492
promptly met. The administrator shall deny the privilege where 1493
the employer is unable to demonstrate the employer's ability to 1494
promptly meet all the obligations imposed on the employer by 1495
this section. The administrator shall consider, but is not 1496
limited to, the following factors, where applicable, in 1497
determining the employer's ability to meet all of the 1498
obligations imposed on the board as an employer by this section: 1499

(1) The board has operated in this state for a minimum of 1500
two years; 1501

(2) Where the board previously contributed to the state 1502
insurance fund or is a successor employer as defined by bureau 1503
rules, the amount of the buyout, as defined by bureau rules; 1504

(3) The sufficiency of the board's assets located in this 1505
state to insure the board's solvency in paying compensation 1506
directly; 1507

(4) The financial records, documents, and data, certified 1508
by a certified public accountant, necessary to provide the 1509
board's full financial disclosure. The records, documents, and 1510
data include, but are not limited to, balance sheets and profit 1511

and loss history for the current year and previous four years. 1512

(5) The board's organizational plan for the administration 1513
of the workers' compensation law; 1514

(6) The board's proposed plan to inform employees of the 1515
proposed self-insurance, the procedures the board will follow as 1516
a self-insuring employer, and the employees' rights to 1517
compensation and benefits; 1518

(7) The board has either an account in a financial 1519
institution in this state, or if the board maintains an account 1520
with a financial institution outside this state, ensures that 1521
workers' compensation checks are drawn from the same account as 1522
payroll checks or the board clearly indicates that payment will 1523
be honored by a financial institution in this state; 1524

(8) The board shall provide the administrator a surety 1525
bond in an amount equal to one hundred twenty-five per cent of 1526
the projected losses as determined by the administrator. 1527

(D) The administrator shall require a surety bond from all 1528
self-insuring employers, issued pursuant to section 4123.351 of 1529
the Revised Code, that is sufficient to compel, or secure to 1530
injured employees, or to the dependents of employees killed, the 1531
payment of compensation and expenses, which shall in no event be 1532
less than that paid or furnished out of the state insurance fund 1533
in similar cases to injured employees or to dependents of killed 1534
employees whose employers contribute to the fund, except when an 1535
employee of the employer, who has suffered the loss of a hand, 1536
arm, foot, leg, or eye prior to the injury for which 1537
compensation is to be paid, and thereafter suffers the loss of 1538
any other of the members as the result of any injury sustained 1539
in the course of and arising out of the employee's employment, 1540

the compensation to be paid by the self-insuring employer is 1541
limited to the disability suffered in the subsequent injury, 1542
additional compensation, if any, to be paid by the bureau out of 1543
the surplus created by section 4123.34 of the Revised Code. 1544

(E) In addition to the requirements of this section, the 1545
administrator shall make and publish rules governing the manner 1546
of making application and the nature and extent of the proof 1547
required to justify a finding of fact by the administrator as to 1548
granting the status of a self-insuring employer, which rules 1549
shall be general in their application, one of which rules shall 1550
provide that all self-insuring employers shall pay into the 1551
state insurance fund such amounts as are required to be credited 1552
to the surplus fund in division (B) of section 4123.34 of the 1553
Revised Code. The administrator may adopt rules establishing 1554
requirements in addition to the requirements described in 1555
division (B)(2) of this section that a public employer shall 1556
meet in order to qualify for self-insuring status. 1557

Employers shall secure directly from the bureau central 1558
offices application forms upon which the bureau shall stamp a 1559
designating number. Prior to submission of an application, an 1560
employer shall make available to the bureau, and the bureau 1561
shall review, the information described in division (B)(1) of 1562
this section, and public employers shall make available, and the 1563
bureau shall review, the information necessary to verify whether 1564
the public employer meets the requirements listed in division 1565
(B)(2) of this section. An employer shall file the completed 1566
application forms with an application fee, which shall cover the 1567
costs of processing the application, as established by the 1568
administrator, by rule, with the bureau at least ninety days 1569
prior to the effective date of the employer's new status as a 1570
self-insuring employer. The application form is not deemed 1571

complete until all the required information is attached thereto. 1572
The bureau shall only accept applications that contain the 1573
required information. 1574

(F) The bureau shall review completed applications within 1575
a reasonable time. If the bureau determines to grant an employer 1576
the status as a self-insuring employer, the bureau shall issue a 1577
statement, containing its findings of fact, that is prepared by 1578
the bureau and signed by the administrator. If the bureau 1579
determines not to grant the status as a self-insuring employer, 1580
the bureau shall notify the employer of the determination and 1581
require the employer to continue to pay its full premium into 1582
the state insurance fund. The administrator also shall adopt 1583
rules establishing a minimum level of performance as a criterion 1584
for granting and maintaining the status as a self-insuring 1585
employer and fixing time limits beyond which failure of the 1586
self-insuring employer to provide for the necessary medical 1587
examinations and evaluations may not delay a decision on a 1588
claim. 1589

(G) The administrator shall adopt rules setting forth 1590
procedures for auditing the program of self-insuring employers. 1591
The bureau shall conduct the audit upon a random basis or 1592
whenever the bureau has grounds for believing that a self- 1593
insuring employer is not in full compliance with bureau rules or 1594
this chapter. 1595

The administrator shall monitor the programs conducted by 1596
self-insuring employers, to ensure compliance with bureau 1597
requirements and for that purpose, shall develop and issue to 1598
self-insuring employers standardized forms for use by the self- 1599
insuring employer in all aspects of the self-insuring employers' 1600
direct compensation program and for reporting of information to 1601

the bureau. 1602

The bureau shall receive and transmit to the self-insuring 1603
employer all complaints concerning any self-insuring employer. 1604
In the case of a complaint against a self-insuring employer, the 1605
administrator shall handle the complaint through the self- 1606
insurance division of the bureau. The bureau shall maintain a 1607
file by employer of all complaints received that relate to the 1608
employer. The bureau shall evaluate each complaint and take 1609
appropriate action. 1610

The administrator shall adopt as a rule a prohibition 1611
against any self-insuring employer from harassing, dismissing, 1612
or otherwise disciplining any employee making a complaint, which 1613
rule shall provide for a financial penalty to be levied by the 1614
administrator payable by the offending self-insuring employer. 1615

(H) For the purpose of making determinations as to whether 1616
to grant status as a self-insuring employer, the administrator 1617
may subscribe to and pay for a credit reporting service that 1618
offers financial and other business information about individual 1619
employers. The costs in connection with the bureau's 1620
subscription or individual reports from the service about an 1621
applicant may be included in the application fee charged 1622
employers under this section. 1623

(I) A self-insuring employer that returns to the state 1624
insurance fund as a state fund employer shall provide the 1625
administrator with medical costs and indemnity costs by claim, 1626
and payroll by manual classification and year, and such other 1627
information the administrator may require. The self-insuring 1628
employer shall submit this information by dates and in a format 1629
determined by the administrator. The administrator shall develop 1630
a state fund experience modification factor for a self-insuring 1631

employer that returns to the state insurance fund based in whole 1632
or in part on the employer's self-insured experience and the 1633
information submitted. 1634

(J) On the first day of July of each year, the 1635
administrator shall calculate separately each self-insuring 1636
employer's assessments for the safety and hygiene fund, 1637
administrative costs pursuant to section 4123.342 of the Revised 1638
Code, and for the surplus fund under division (B) of section 1639
4123.34 of the Revised Code, on the basis of the paid 1640
compensation attributable to the individual self-insuring 1641
employer according to the following calculation: 1642

(1) The total assessment against all self-insuring 1643
employers as a class for each fund and for the administrative 1644
costs for the year that the assessment is being made, as 1645
determined by the administrator, divided by the total amount of 1646
paid compensation for the previous calendar year attributable to 1647
all amenable self-insuring employers; 1648

(2) Multiply the quotient in division (J)(1) of this 1649
section by the total amount of paid compensation for the 1650
previous calendar year that is attributable to the individual 1651
self-insuring employer for whom the assessment is being 1652
determined. Each self-insuring employer shall pay the assessment 1653
that results from this calculation, unless the assessment 1654
resulting from this calculation falls below a minimum 1655
assessment, which minimum assessment the administrator shall 1656
determine on the first day of July of each year with the advice 1657
and consent of the bureau of workers' compensation board of 1658
directors, in which event, the self-insuring employer shall pay 1659
the minimum assessment. 1660

In determining the total amount due for the total 1661

assessment against all self-insuring employers as a class for 1662
each fund and the administrative assessment, the administrator 1663
shall reduce proportionately the total for each fund and 1664
assessment by the amount of money in the self-insurance 1665
assessment fund as of the date of the computation of the 1666
assessment. 1667

The administrator shall calculate the assessment for the 1668
portion of the surplus fund under division (B) of section 1669
4123.34 of the Revised Code that is used for reimbursement to a 1670
self-insuring employer under division (H) of section 4123.512 of 1671
the Revised Code in the same manner as set forth in divisions 1672
(J) (1) and (2) of this section except that the administrator 1673
shall calculate the total assessment for this portion of the 1674
surplus fund only on the basis of those self-insuring employers 1675
that retain participation in reimbursement to the self-insuring 1676
employer under division (H) of section 4123.512 of the Revised 1677
Code and the individual self-insuring employer's proportion of 1678
paid compensation shall be calculated only for those self- 1679
insuring employers who retain participation in reimbursement to 1680
the self-insuring employer under division (H) of section 1681
4123.512 of the Revised Code. 1682

An employer who no longer is a self-insuring employer in 1683
this state or who no longer is operating in this state, shall 1684
continue to pay assessments for administrative costs and for the 1685
surplus fund under division (B) of section 4123.34 of the 1686
Revised Code based upon paid compensation attributable to claims 1687
that occurred while the employer was a self-insuring employer 1688
within this state. 1689

(K) There is hereby created in the state treasury the 1690
self-insurance assessment fund. All investment earnings of the 1691

fund shall be deposited in the fund. The administrator shall use 1692
the money in the self-insurance assessment fund only for 1693
administrative costs as specified in section 4123.341 of the 1694
Revised Code. 1695

(L) Every self-insuring employer shall certify, in 1696
affidavit form subject to the penalty for perjury, to the bureau 1697
the amount of the self-insuring employer's paid compensation for 1698
the previous calendar year. In reporting paid compensation paid 1699
for the previous year, a self-insuring employer shall exclude 1700
from the total amount of paid compensation any reimbursement the 1701
self-insuring employer receives in the previous calendar year 1702
from the surplus fund pursuant to section 4123.512 of the 1703
Revised Code for any paid compensation. The self-insuring 1704
employer also shall exclude from the paid compensation reported 1705
any amount recovered under section 4123.931 of the Revised Code 1706
and any amount that is determined not to have been payable to or 1707
on behalf of a claimant in any final administrative or judicial 1708
proceeding. The self-insuring employer shall exclude such 1709
amounts from the paid compensation reported in the reporting 1710
period subsequent to the date the determination is made. The 1711
administrator shall adopt rules, in accordance with Chapter 119. 1712
of the Revised Code, that provide for all of the following: 1713

(1) Establishing the date by which self-insuring employers 1714
must submit such information and the amount of the assessments 1715
provided for in division (J) of this section for employers who 1716
have been granted self-insuring status within the last calendar 1717
year; 1718

(2) If an employer fails to pay the assessment when due, 1719
the administrator may add a late fee penalty of not more than 1720
five hundred dollars to the assessment plus an additional 1721

| | |
|---|--------------------------------------|
| penalty amount as follows: | 1722 |
| (a) For an assessment from sixty-one to ninety days past due, the prime interest rate, multiplied by the assessment due; | 1723 1724 |
| (b) For an assessment from ninety-one to one hundred twenty days past due, the prime interest rate plus two per cent, multiplied by the assessment due; | 1725 1726 1727 |
| (c) For an assessment from one hundred twenty-one to one hundred fifty days past due, the prime interest rate plus four per cent, multiplied by the assessment due; | 1728 1729 1730 |
| (d) For an assessment from one hundred fifty-one to one hundred eighty days past due, the prime interest rate plus six per cent, multiplied by the assessment due; | 1731 1732 1733 |
| (e) For an assessment from one hundred eighty-one to two hundred ten days past due, the prime interest rate plus eight per cent, multiplied by the assessment due; | 1734 1735 1736 |
| (f) For each additional thirty-day period or portion thereof that an assessment remains past due after it has remained past due for more than two hundred ten days, the prime interest rate plus eight per cent, multiplied by the assessment due. | 1737 1738 1739 1740 1741 |
| (3) An employer may appeal a late fee penalty and penalty assessment to the administrator. | 1742 1743 |
| For purposes of division (L)(2) of this section, "prime interest rate" means the average bank prime rate, and the administrator shall determine the prime interest rate in the same manner as a county auditor determines the average bank prime rate under section 929.02 of the Revised Code. | 1744 1745 1746 1747 1748 |
| The administrator shall include any assessment and | 1749 |

penalties that remain unpaid for previous assessment periods in 1750
the calculation and collection of any assessments due under this 1751
division or division (J) of this section. 1752

(M) As used in this section, "paid compensation" means all 1753
amounts paid by a self-insuring employer for living maintenance 1754
benefits, all amounts for compensation paid pursuant to sections 1755
4121.63, 4121.67, 4123.56, 4123.57, 4123.58, 4123.59, 4123.60, 1756
and 4123.64 of the Revised Code, all amounts paid as wages in 1757
lieu of such compensation, all amounts paid in lieu of such 1758
compensation under a nonoccupational accident and sickness 1759
program fully funded by the self-insuring employer, and all 1760
amounts paid by a self-insuring employer for a violation of a 1761
specific safety standard pursuant to Section 35 of Article II, 1762
Ohio Constitution and section 4121.47 of the Revised Code. 1763

(N) Should any section of this chapter or Chapter 4121. of 1764
the Revised Code providing for self-insuring employers' 1765
assessments based upon compensation paid be declared 1766
unconstitutional by a final decision of any court, then that 1767
section of the Revised Code declared unconstitutional shall 1768
revert back to the section in existence prior to November 3, 1769
1989, providing for assessments based upon payroll. 1770

(O) The administrator may grant a self-insuring employer 1771
the privilege to self-insure a construction project entered into 1772
by the self-insuring employer that is scheduled for completion 1773
within six years after the date the project begins, and the 1774
total cost of which is estimated to exceed one hundred million 1775
dollars or, for employers described in division (R) of this 1776
section, if the construction project is estimated to exceed 1777
twenty-five million dollars. The administrator may waive such 1778
cost and time criteria and grant a self-insuring employer the 1779

privilege to self-insure a construction project regardless of 1780
the time needed to complete the construction project and 1781
provided that the cost of the construction project is estimated 1782
to exceed fifty million dollars. A self-insuring employer who 1783
desires to self-insure a construction project shall submit to 1784
the administrator an application listing the dates the 1785
construction project is scheduled to begin and end, the 1786
estimated cost of the construction project, the contractors and 1787
subcontractors whose employees are to be self-insured by the 1788
self-insuring employer, the provisions of a safety program that 1789
is specifically designed for the construction project, and a 1790
statement as to whether a collective bargaining agreement 1791
governing the rights, duties, and obligations of each of the 1792
parties to the agreement with respect to the construction 1793
project exists between the self-insuring employer and a labor 1794
organization. 1795

A self-insuring employer may apply to self-insure the 1796
employees of either of the following: 1797

(1) All contractors and subcontractors who perform labor 1798
or work or provide materials for the construction project; 1799

(2) All contractors and, at the administrator's 1800
discretion, a substantial number of all the subcontractors who 1801
perform labor or work or provide materials for the construction 1802
project. 1803

Upon approval of the application, the administrator shall 1804
mail a certificate granting the privilege to self-insure the 1805
construction project to the self-insuring employer. The 1806
certificate shall contain the name of the self-insuring employer 1807
and the name, address, and telephone number of the self-insuring 1808
employer's representatives who are responsible for administering 1809

workers' compensation claims for the construction project. The 1810
self-insuring employer shall post the certificate in a 1811
conspicuous place at the site of the construction project. 1812

The administrator shall maintain a record of the 1813
contractors and subcontractors whose employees are covered under 1814
the certificate issued to the self-insured employer. A self- 1815
insuring employer immediately shall notify the administrator 1816
when any contractor or subcontractor is added or eliminated from 1817
inclusion under the certificate. 1818

Upon approval of the application, the self-insuring 1819
employer is responsible for the administration and payment of 1820
all claims under this chapter and Chapter 4121. of the Revised 1821
Code for the employees of the contractor and subcontractors 1822
covered under the certificate who receive injuries or are killed 1823
in the course of and arising out of employment on the 1824
construction project, or who contract an occupational disease in 1825
the course of employment on the construction project. For 1826
purposes of this chapter and Chapter 4121. of the Revised Code, 1827
a claim that is administered and paid in accordance with this 1828
division is considered a claim against the self-insuring 1829
employer listed in the certificate. A contractor or 1830
subcontractor included under the certificate shall report to the 1831
self-insuring employer listed in the certificate, all claims 1832
that arise under this chapter and Chapter 4121. of the Revised 1833
Code in connection with the construction project for which the 1834
certificate is issued. 1835

A self-insuring employer who complies with this division 1836
is entitled to the protections provided under this chapter and 1837
Chapter 4121. of the Revised Code with respect to the employees 1838
of the contractors and subcontractors covered under a 1839

certificate issued under this division for death or injuries 1840
that arise out of, or death, injuries, or occupational diseases 1841
that arise in the course of, those employees' employment on that 1842
construction project, as if the employees were employees of the 1843
self-insuring employer, provided that the self-insuring employer 1844
also complies with this section. No employee of the contractors 1845
and subcontractors covered under a certificate issued under this 1846
division shall be considered the employee of the self-insuring 1847
employer listed in that certificate for any purposes other than 1848
this chapter and Chapter 4121. of the Revised Code. Nothing in 1849
this division gives a self-insuring employer authority to 1850
control the means, manner, or method of employment of the 1851
employees of the contractors and subcontractors covered under a 1852
certificate issued under this division. 1853

The contractors and subcontractors included under a 1854
certificate issued under this division are entitled to the 1855
protections provided under this chapter and Chapter 4121. of the 1856
Revised Code with respect to the contractor's or subcontractor's 1857
employees who are employed on the construction project which is 1858
the subject of the certificate, for death or injuries that arise 1859
out of, or death, injuries, or occupational diseases that arise 1860
in the course of, those employees' employment on that 1861
construction project. 1862

The contractors and subcontractors included under a 1863
certificate issued under this division shall identify in their 1864
payroll records the employees who are considered the employees 1865
of the self-insuring employer listed in that certificate for 1866
purposes of this chapter and Chapter 4121. of the Revised Code, 1867
and the amount that those employees earned for employment on the 1868
construction project that is the subject of that certificate. 1869
Notwithstanding any provision to the contrary under this chapter 1870

and Chapter 4121. of the Revised Code, the administrator shall 1871
exclude the payroll that is reported for employees who are 1872
considered the employees of the self-insuring employer listed in 1873
that certificate, and that the employees earned for employment 1874
on the construction project that is the subject of that 1875
certificate, when determining those contractors' or 1876
subcontractors' premiums or assessments required under this 1877
chapter and Chapter 4121. of the Revised Code. A self-insuring 1878
employer issued a certificate under this division shall include 1879
in the amount of paid compensation it reports pursuant to 1880
division (L) of this section, the amount of paid compensation 1881
the self-insuring employer paid pursuant to this division for 1882
the previous calendar year. 1883

Nothing in this division shall be construed as altering 1884
the rights of employees under this chapter and Chapter 4121. of 1885
the Revised Code as those rights existed prior to September 17, 1886
1996. Nothing in this division shall be construed as altering 1887
the rights devolved under sections 2305.31 and 4123.82 of the 1888
Revised Code as those rights existed prior to September 17, 1889
1996. 1890

As used in this division, "privilege to self-insure a 1891
construction project" means privilege to pay individually 1892
compensation, and to furnish medical, surgical, nursing, and 1893
hospital services and attention and funeral expenses directly to 1894
injured employees or the dependents of killed employees. 1895

(P) A self-insuring employer whose application is granted 1896
under division (O) of this section shall designate a safety 1897
professional to be responsible for the administration and 1898
enforcement of the safety program that is specifically designed 1899
for the construction project that is the subject of the 1900

application. 1901

A self-insuring employer whose application is granted 1902
under division (O) of this section shall employ an ombudsperson 1903
for the construction project that is the subject of the 1904
application. The ombudsperson shall have experience in workers' 1905
compensation or the construction industry, or both. The 1906
ombudsperson shall perform all of the following duties: 1907

(1) Communicate with and provide information to employees 1908
who are injured in the course of, or whose injury arises out of 1909
employment on the construction project, or who contract an 1910
occupational disease in the course of employment on the 1911
construction project; 1912

(2) Investigate the status of a claim upon the request of 1913
an employee to do so; 1914

(3) Provide information to claimants, third party 1915
administrators, employers, and other persons to assist those 1916
persons in protecting their rights under this chapter and 1917
Chapter 4121. of the Revised Code. 1918

A self-insuring employer whose application is granted 1919
under division (O) of this section shall post the name of the 1920
safety professional and the ombudsperson and instructions for 1921
contacting the safety professional and the ombudsperson in a 1922
conspicuous place at the site of the construction project. 1923

(Q) The administrator may consider all of the following 1924
when deciding whether to grant a self-insuring employer the 1925
privilege to self-insure a construction project as provided 1926
under division (O) of this section: 1927

(1) Whether the self-insuring employer has an 1928
organizational plan for the administration of the workers' 1929

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| compensation law; | 1930 |
| (2) Whether the safety program that is specifically | 1931 |
| designed for the construction project provides for the safety of | 1932 |
| employees employed on the construction project, is applicable to | 1933 |
| all contractors and subcontractors who perform labor or work or | 1934 |
| provide materials for the construction project, and has as a | 1935 |
| component, a safety training program that complies with | 1936 |
| standards adopted pursuant to the "Occupational Safety and | 1937 |
| Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and | 1938 |
| provides for continuing management and employee involvement; | 1939 |
| (3) Whether granting the privilege to self-insure the | 1940 |
| construction project will reduce the costs of the construction | 1941 |
| project; | 1942 |
| (4) Whether the self-insuring employer has employed an | 1943 |
| ombudsperson as required under division (P) of this section; | 1944 |
| (5) Whether the self-insuring employer has sufficient | 1945 |
| surety to secure the payment of claims for which the self- | 1946 |
| insuring employer would be responsible pursuant to the granting | 1947 |
| of the privilege to self-insure a construction project under | 1948 |
| division (O) of this section. | 1949 |
| (R) As used in divisions (O), (P), and (Q), "self-insuring | 1950 |
| employer" includes the following employers, whether or not they | 1951 |
| have been granted the status of being a self-insuring employer | 1952 |
| under division (B) of this section: | 1953 |
| (1) A state institution of higher education; | 1954 |
| (2) A school district; | 1955 |
| (3) A county school financing district; | 1956 |
| (4) An educational service center; | 1957 |

| | |
|--|--|
| (5) A community school established under Chapter 3314. of the Revised Code; | 1958 1959 |
| (6) A municipal power agency as defined in section 3734.058 of the Revised Code. | 1960 1961 |
| (S) As used in this section: | 1962 |
| (1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy; | 1963 1964 1965 |
| (2) "State institution of higher education" means the state universities listed in section 3345.011 of the Revised Code, community colleges created pursuant to Chapter 3354. of the Revised Code, university branches created pursuant to Chapter 3355. of the Revised Code, technical colleges created pursuant to Chapter 3357. of the Revised Code, and state community colleges created pursuant to Chapter 3358. of the Revised Code. | 1966 1967 1968 1969 1970 1971 1972 1973 |
| <u>Sec. 4133.01. As used in this chapter:</u> | 1974 |
| <u>(A) "Alternate employer organization" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into an agreement with one or more client employers for purposes of providing human resource management services and sharing employer responsibility and liability.</u> | 1975 1976 1977 1978 1979 1980 |
| <u>(B) "Alternate employer organization agreement" means a written contract between a client employer and an alternate employer organization to provide human resource management services and to share employer responsibilities and liabilities.</u> | 1981 1982 1983 1984 |
| <u>(C) "Client employer" means a sole proprietor,</u> | 1985 |

partnership, association, limited liability company, or 1986
corporation that enters into an alternate employer organization 1987
agreement and shares employer responsibility and liability with 1988
the alternate employer organization. 1989

(D) "Trade secret" has the same meaning as in section 1990
1333.61 of the Revised Code. 1991

(E) "Working capital" means the excess of current assets 1992
over current liabilities as determined by generally accepted 1993
accounting principles. 1994

(F) "Worksite employee" means an individual assigned to a 1995
client employer on a permanent basis, not as a temporary 1996
supplement to the client employer's workforce, and who is 1997
employed by both an alternate employer organization and a client 1998
employer pursuant to an alternate employer organization 1999
agreement. 2000

Sec. 4133.02. The administrator of workers' compensation 2001
shall adopt rules in accordance with Chapter 119. of the Revised 2002
Code to administer and enforce this chapter, including rules to 2003
administer and enforce division (E) of section 4133.03 of the 2004
Revised Code. 2005

The administrator may adopt rules for the acceptance of 2006
electronic filings in accordance with Chapter 1306. of the 2007
Revised Code for applications, documents, reports, and other 2008
filings required by this chapter. 2009

Sec. 4133.03. (A) The alternate employer organization with 2010
whom a worksite employee is employed shall do all of the 2011
following: 2012

(1) Process and pay all wages and applicable state and 2013
federal payroll taxes associated with the worksite employee, 2014

irrespective of payments made by the client employer, pursuant 2015
to the terms and conditions of compensation in the alternate 2016
employer organization agreement between the alternate employer 2017
organization and the client employer; 2018

(2) Pay all related payroll taxes associated with a 2019
worksite employee independent of the terms and conditions 2020
contained in the alternate employer organization agreement 2021
between the alternate employer organization and the client 2022
employer; 2023

(3) Maintain workers' compensation coverage, pay all 2024
workers' compensation premiums, and manage all workers' 2025
compensation claims, filings, and related procedures associated 2026
with a worksite employee in compliance with Chapters 4121. and 2027
4123. of the Revised Code, except that when worksite employees 2028
include family farm officers, ordained ministers, or corporate 2029
officers of the client employer, payroll reports shall include 2030
the entire amount of payroll associated with those persons; 2031

(4) Annually provide written notice to each worksite 2032
employee it assigns to perform services to a client employer of 2033
the relationship between and the responsibilities of the 2034
alternate employer organization and the client employer; 2035

(5) Maintain complete records separately listing the 2036
manual classifications of each client employer and the payroll 2037
reported to each manual classification for each client employer 2038
for each payroll reporting period during the time period covered 2039
in the alternate employer organization agreement; 2040

(6) Maintain a record of workers' compensation claims for 2041
each client employer; 2042

(7) Make periodic reports, as determined by the 2043

administrator of workers' compensation, of client employers and 2044
total workforce to the administrator; 2045

(8) Report individual client employer payroll, claims, and 2046
classification data under a separate and unique subaccount to 2047
the administrator; 2048

(9) Within fourteen days after receiving notice from the 2049
bureau of workers' compensation that a refund or rebate will be 2050
applied to workers' compensation premiums, provide a copy of 2051
that notice to any client employer to whom that notice is 2052
relevant; 2053

(10) Annually certify to the administrator that all client 2054
employer federal payroll taxes have been timely and 2055
appropriately paid, and on request of the administrator, provide 2056
proof of payment. 2057

(B) In any alternate employer organization agreement 2058
between an alternate employer organization and a client 2059
employer, the client employer shall be listed as the employer on 2060
the W-2 forms of the worksite employees, but the alternate 2061
employer organization remains jointly and severally liable for 2062
all applicable local, state, and federal withholding and 2063
employer-paid taxes with respect to the worksite employees. 2064

(C) An alternate employer organization shall file federal 2065
payroll taxes entirely under the tax identification number of 2066
the client employer, but shall remain jointly and severally 2067
liable for all wages and payroll taxes associated with worksite 2068
employees. In addition, if any of the alternate employer 2069
organization's clients fail to transmit payment to the alternate 2070
employer organization sufficient to cover payment of all wages 2071
and employer-paid taxes, the alternate employer organization 2072

shall keep a record of the nonpayment or underpayment and a 2073
record that the alternate employer organization nonetheless paid 2074
the wages and taxes owed. 2075

(D) An alternate employer organization may not provide 2076
partial or split workers' compensation coverage for worksite 2077
employees in which the client employer provides that coverage 2078
for some, but not all, of the client employer's worksite 2079
employees. On entering into an alternate employer organization 2080
agreement, all worksite employees shall be covered under the 2081
workers' compensation policy of the alternate employer 2082
organization. 2083

(E) The alternate employer organization with whom a 2084
worksite employee is employed shall provide a list of all of the 2085
following information to the client employer on the written 2086
request of the client employer: 2087

(1) All workers' compensation claims, premiums, and 2088
payroll associated with that client employer; 2089

(2) Compensation and benefits paid and reserves 2090
established for each claim listed under division (E) (1) of this 2091
section; 2092

(3) Any other information available to the alternate 2093
employer organization from the bureau of workers' compensation 2094
regarding that client employer. 2095

(F) (1) An alternate employer organization shall provide 2096
the information required under division (E) of this section in 2097
writing to the requesting client employer within forty-five days 2098
after receiving a written request from the client employer. 2099

(2) For purposes of division (F) of this section, an 2100
alternate employer organization has provided the required 2101

information to the client employer when the information is 2102
received by the United States postal service or when the 2103
information is personally delivered, in writing, directly to the 2104
client employer. 2105

(G) Except as provided in section 4133.11 of the Revised 2106
Code and unless otherwise agreed to in the alternate employer 2107
organization agreement, the alternate employer organization with 2108
whom a worksite employee is employed has a right of direction 2109
and control over each worksite employee assigned to a client 2110
employer's location. However, a client employer shall retain 2111
sufficient direction and control over a worksite employee as is 2112
necessary to do any of the following: 2113

(1) Conduct the client employer's business, including 2114
training and supervising worksite employees; 2115

(2) Ensure the quality, adequacy, and safety of the goods 2116
or services produced or sold in the client employer's business; 2117

(3) Discharge any fiduciary responsibility that the client 2118
employer may have; 2119

(4) Comply with any applicable licensure, regulatory, or 2120
statutory requirement of the client employer. 2121

(H) Unless otherwise agreed to in the alternate employer 2122
organization agreement, liability for acts, errors, and 2123
omissions shall be determined as follows: 2124

(1) An alternate employer organization shall not be liable 2125
for the acts, errors, and omissions of a client employer or a 2126
worksite employee when those acts, errors, and omissions occur 2127
under the direction and control of the client employer. 2128

(2) A client employer shall not be liable for the acts, 2129

errors, and omissions of an alternate employer organization or a 2130
worksite employee when those acts, errors, and omissions occur 2131
under the direction and control of the alternate employer 2132
organization. 2133

(I) Nothing in divisions (G) and (H) of this section shall 2134
be construed to limit any liability or obligation specifically 2135
agreed to in the alternate employer organization agreement. 2136

(J) An alternate employer organization is not, and shall 2137
not be considered, a professional employer organization, as 2138
defined in section 4125.01 of the Revised Code. An alternate 2139
employer organization may not hold itself out, advertise, or 2140
otherwise identify itself in any way as a professional employer 2141
organization. 2142

(K) In an alternate employer organization agreement, both 2143
the client employer and alternate employer organization are 2144
jointly and severally liable for the payment of employee wages 2145
and taxes. The alternate employer organization and client 2146
employer share in the employer responsibilities and liabilities 2147
with respect to a worksite employee, pursuant to the alternate 2148
employer organization agreement. 2149

(L) The use of a client employer's tax identification 2150
number for federal payroll tax purposes as required under 2151
division (C) of this section shall not be construed to absolve 2152
the alternate employer organization of any responsibilities or 2153
liabilities applicable to an alternative employer organization, 2154
including those under federal law. 2155

Sec. 4133.04. (A) When a client employer enters into an 2156
alternate employer organization agreement with an alternate 2157
employer organization, the alternate employer organization is 2158

the employer of record and the succeeding employer for the 2159
purposes of determining a workers' compensation experience 2160
rating pursuant to Chapter 4123. of the Revised Code. 2161

(B) Pursuant to Section 35 of Article II, Ohio 2162
Constitution, and section 4123.74 of the Revised Code, the 2163
exclusive remedy for a worksite employee to recover for 2164
injuries, diseases, or death incurred in the course of and 2165
arising out of the employment relationship against either the 2166
alternate employer organization or the client employer are those 2167
benefits provided under Chapters 4121. and 4123. of the Revised 2168
Code. 2169

Sec. 4133.05. A worksite employee under an alternate 2170
employer organization agreement shall not, solely as a result of 2171
being a worksite employee, be considered an employee of the 2172
alternate employer organization for purposes of general 2173
liability insurance, fidelity bonds, surety bonds, employer 2174
liability not otherwise covered by Chapters 4121. and 4123. of 2175
the Revised Code, or liquor liability insurance carried by the 2176
alternate employer organization, unless the alternate employer 2177
organization agreement and applicable prearranged employment 2178
contract, insurance contract, or bond specifically states 2179
otherwise. 2180

Sec. 4133.06. (A) For purposes of determining tax credits 2181
and other economic incentives that are provided by this state or 2182
any political subdivision and based on employment, worksite 2183
employees under an alternate employer organization agreement 2184
shall be considered employees solely of the client employer. 2185

(1) A client employer shall be entitled to the benefit of 2186
any tax credit, economic incentive, or similar benefit arising 2187
as the result of the client employer's employment of worksite 2188

employees. If the grant or amount of any tax credit, economic 2189
incentive, or other benefit is based on number of employees, 2190
each client employer shall be treated as employing only those 2191
worksite employees employed by the client employer. Worksite 2192
employees working for other client employers of the alternate 2193
employer organization shall not be counted as employees for that 2194
purpose. 2195

(2) Upon request by a client employer or an agency or 2196
department of this state, an alternate employer organization 2197
shall provide employment information reasonably required by the 2198
agency or department responsible for administration of the tax 2199
credit or economic incentive and necessary to support any 2200
request, claim, application, or other action by a client 2201
employer seeking the tax credit or economic incentive. 2202

(B) Worksite employees whose services are subject to sales 2203
tax shall be considered the employees of the client employer for 2204
purposes of collecting and levying sales tax on the services 2205
performed by the worksite employee. Nothing contained in this 2206
chapter shall relieve a client employer or alternate employer 2207
organization of any sales tax liability with respect to its 2208
goods or services. 2209

(C) Any tax assessed on a per capita or per employee basis 2210
shall be assessed against the client employer for worksite 2211
employees and against the alternate employer organization for 2212
employees of the alternate employer organization who are not 2213
worksite employees employed with a client employer. 2214

(D) For purposes of computing any tax that is imposed or 2215
calculated upon the basis of total payroll, the alternate 2216
employer organization shall be eligible to use any small 2217
business allowance or exemption based solely on the employees of 2218

the alternate employer organization who are not worksite 2219
employees with any client employer. The eligibility of a client 2220
employer for the allowance or exemption shall be based solely 2221
upon the payroll of the employees of the client employer, 2222
including any worksite employees employed by the client 2223
employer. 2224

Sec. 4133.07. (A) Not later than thirty days after its 2225
formation, an alternate employer organization operating in this 2226
state shall register with the administrator of workers' 2227
compensation on forms provided by the administrator. Following 2228
initial registration, each alternate employer organization shall 2229
register with the administrator annually on or before the 2230
thirty-first day of December. 2231

(B) Initial registration and each annual registration 2232
renewal shall include all of the following: 2233

(1) A list of each of the alternate employer 2234
organization's client employers current as of the date of 2235
registration for purposes of initial registration or current as 2236
of the date of annual registration renewal, or within fourteen 2237
days of adding or releasing a client, that includes the client 2238
employer's name, address, federal tax identification number, and 2239
bureau of workers' compensation risk number; 2240

(2) A fee as determined by the administrator; 2241

(3) The name or names under which the alternate employer 2242
organization conducts business; 2243

(4) The address of the alternate employer organization's 2244
principal place of business and the address of each office it 2245
maintains in this state; 2246

(5) The alternate employer organization's taxpayer or 2247

| | |
|--|------|
| <u>employer identification number;</u> | 2248 |
| <u>(6) A list of each state in which the alternate employer organization has operated in the preceding five years, and the name, corresponding with each state, under which the alternate employer organization operated in each state, including any alternative names, names of predecessors, and if known, successor business entities;</u> | 2249 |
| | 2250 |
| | 2251 |
| | 2252 |
| | 2253 |
| | 2254 |
| <u>(7) The most recent financial statement prepared and audited pursuant to division (B) of section 4133.08 of the Revised Code;</u> | 2255 |
| | 2256 |
| | 2257 |
| <u>(8) A bond or letter of credit in accordance with division (D) (1) of this section;</u> | 2258 |
| | 2259 |
| <u>(9) An attestation of the accuracy of the data submissions from the chief executive officer, president, or other individual who serves as the controlling person of the alternate employer organization.</u> | 2260 |
| | 2261 |
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| | 2263 |
| <u>(C) Upon terms and for periods that the administrator considers appropriate, the administrator may issue a limited registration to an alternate employer organization that provides all of the following items:</u> | 2264 |
| | 2265 |
| | 2266 |
| | 2267 |
| <u>(1) A properly executed request for limited registration on a form provided by the administrator;</u> | 2268 |
| | 2269 |
| <u>(2) All information and materials required for registration in divisions (B) (1) to (6) of this section;</u> | 2270 |
| | 2271 |
| <u>(3) Information and documentation necessary to show that the alternate employer organization satisfies all of the following criteria:</u> | 2272 |
| | 2273 |
| | 2274 |
| <u>(a) It is domiciled outside of this state.</u> | 2275 |

| | |
|---|------|
| <u>(b) It is licensed or registered as an alternate employer</u> | 2276 |
| <u>organization in another state.</u> | 2277 |
| <u>(c) It does not maintain an office in this state.</u> | 2278 |
| <u>(d) It does not participate in direct solicitations for</u> | 2279 |
| <u>client employers located or domiciled in this state.</u> | 2280 |
| <u>(e) It has fifty or fewer worksite employees employed or</u> | 2281 |
| <u>domiciled in this state on any given day.</u> | 2282 |
| <u>(D) (1) An alternate employer organization shall provide</u> | 2283 |
| <u>security in the form of a bond or letter of credit assignable to</u> | 2284 |
| <u>the Ohio bureau of workers' compensation in an amount necessary</u> | 2285 |
| <u>to meet the financial obligations of the alternate employer</u> | 2286 |
| <u>organization pursuant to this chapter and Chapters 4121. and</u> | 2287 |
| <u>4123. of the Revised Code. The administrator shall determine the</u> | 2288 |
| <u>amount of the bond required under this division for each</u> | 2289 |
| <u>registrant, which shall be at least one million dollars.</u> | 2290 |
| <u>(2) An alternate employer organization may appeal the</u> | 2291 |
| <u>amount of the security required pursuant to rules adopted under</u> | 2292 |
| <u>division (D) (1) of this section in accordance with section</u> | 2293 |
| <u>4123.291 of the Revised Code.</u> | 2294 |
| <u>(3) An alternate employer organization shall pay premiums</u> | 2295 |
| <u>and assessments for purposes of Chapters 4121. and 4123. of the</u> | 2296 |
| <u>Revised Code on a monthly basis pursuant to division (A) of</u> | 2297 |
| <u>section 4123.35 of the Revised Code.</u> | 2298 |
| <u>(E) Notwithstanding division (D) of this section, an</u> | 2299 |
| <u>alternate employer organization that qualifies for self-</u> | 2300 |
| <u>insurance or retrospective rating under section 4123.29 or</u> | 2301 |
| <u>4123.35 of the Revised Code shall abide by the financial</u> | 2302 |
| <u>disclosure and security requirements pursuant to those sections</u> | 2303 |
| <u>and the rules adopted under those sections in place of the</u> | 2304 |

requirements specified in division (D) of this section or 2305
specified in rules adopted pursuant to that division. 2306

(F) Except to the extent necessary for the administrator 2307
to administer the statutory duties of the administrator and for 2308
employees of the state to perform their official duties, all 2309
records, reports, client lists, and other information obtained 2310
from an alternate employer organization under divisions (A), 2311
(B), and (C) of this section are confidential and shall be 2312
considered trade secrets and shall not be published or open to 2313
public inspection. 2314

(G) The list described in division (B)(1) of this section 2315
shall be considered a trade secret. 2316

(H) The administrator shall establish the fee described in 2317
division (B)(2) of this section in an amount that does not 2318
exceed the cost of the administration of the initial and renewal 2319
registration process. 2320

(I) A financial statement required under division (B)(7) 2321
of this section for initial registration shall be the most 2322
recent financial statement of the alternate employer 2323
organization and shall not be older than thirteen months. For 2324
each registration renewal, the alternate employer organization 2325
shall file the required financial statement within one hundred 2326
eighty days after the end of the alternate employer 2327
organization's entity's fiscal year. An alternate employer 2328
organization may apply to the administrator for an extension 2329
beyond that time if the alternate employer organization provides 2330
the administrator with a letter from the alternate employer 2331
organization's auditor stating the reason for delay and the 2332
anticipated completion date. 2333

(J) Multiple, unrelated alternate employer organizations shall not combine together for purposes of obtaining workers' compensation coverage or for forming any type of self-insurance arrangement available under this chapter. 2334
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(K) An alternate employer organization may not own or co-own an affiliated professional employer organization or alternate employer organization. 2338
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(L) The administrator shall maintain a list of alternate employer organizations registered under this section that is readily available to the public by electronic or other means. 2341
2342
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(M) (1) An alternate employer organization may assist a client employer in procuring a health benefit plan as a broker or otherwise, but shall not act as the employer or sponsor of a health benefit plan. 2344
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(2) As used in this division: 2348

(a) "Health benefit plan" means a policy, contract, certificate, agreement, or other program offered to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including benefit plans marketed in the individual or group market by all associations, whether bona fide or non-bona fide. "Health benefit plan" also means a limited benefit plan. 2349
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(b) "Health care services" has the same meaning as in section 3922.01 of the Revised Code. 2356
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Sec. 4133.08. (A) An alternate employer organization shall maintain positive working capital at initial or annual registration, as reflected in the financial statements submitted to the bureau of workers' compensation. If a deficit in working capital is reflected in the financial statements submitted to 2358
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the bureau, the alternate employer organization shall submit to 2363
the administrator of workers' compensation a quarterly financial 2364
statement for each calendar quarter during which there is a 2365
deficit in working capital, accompanied by an attestation of the 2366
chief executive officer, president, or other individual who 2367
serves as the controlling person of the alternate employer 2368
organization that all wages, taxes, workers' compensation 2369
premiums, and employee benefits have been paid by the alternate 2370
employer organization. The bond or letter of credit required 2371
under division (D)(1) of section 4133.07 of the Revised Code 2372
shall be held by a depository designated by the administrator 2373
and shall secure payment by the alternate employer organization 2374
of all taxes, wages, benefits, or other entitlements due or 2375
otherwise pertaining to worksite employees, if the alternate 2376
employer organization does not make those payments when due. 2377

(B) An alternate employer organization shall prepare 2378
financial statements in accordance with generally accepted 2379
accounting principles and submit them for registration and 2380
registration renewal under section 4133.07 of the Revised Code. 2381
The financial statements shall be audited by an independent 2382
alternate public accountant authorized to practice in the 2383
jurisdiction in which that accountant is located. 2384

(1) The resulting report of the auditor shall not include 2385
either of the following: 2386

(a) A qualification or disclaimer of opinion as to 2387
adherence to generally accepted accounting principles; 2388

(b) A statement expressing substantial doubt about the 2389
ability of the alternate employer organization to continue as a 2390
going concern. 2391

(2) However, if an alternate employer organization does 2392
not have at least twelve months of operating history on which to 2393
base financial statements, the financial statements shall be 2394
reviewed by a certified public accountant. 2395

(3) Notwithstanding division (B) (1) (a) of this section, if 2396
an alternate employer organization is a subsidiary or is related 2397
to a variable interest entity, the alternate employer 2398
organization or alternate employer organization entity may 2399
submit financial statements of the alternate employer 2400
organization. 2401

(C) The bureau shall deny initial or annual registration 2402
to an applicant that does not meet the requirements of this 2403
section. 2404

Sec. 4133.09. (A) In accordance with Chapter 119. of the 2405
Revised Code, the administrator of the bureau of workers' 2406
compensation may deny registration or revoke the registration of 2407
an alternate employer organization and rescind its status as an 2408
employer upon a finding that the alternate employer organization 2409
has done any of the following: 2410

(1) Obtained or attempted to obtain registration through 2411
misrepresentation, misstatement of a material fact, or fraud; 2412

(2) Misappropriated any funds of the client employer; 2413

(3) Used fraudulent or coercive practices to obtain or 2414
retain business or demonstrated financial irresponsibility; 2415

(4) Failed to appear, without reasonable cause or excuse, 2416
in response to a subpoena lawfully issued by the administrator; 2417

(5) Failed to comply with the requirements of this 2418
chapter. 2419

(B) The administrator's decision to deny or revoke an 2420
alternate employer organization's registration or to rescind its 2421
status as an employer is stayed pending the exhaustion of all 2422
administrative appeals by the alternate employer organization. 2423

The administrator shall adopt rules that require that when 2424
an employer contacts the bureau of workers' compensation to 2425
determine whether a particular alternate employer organization 2426
is registered, if the administrator has denied or revoked that 2427
alternate employer organization's registration or rescinded its 2428
status as an employer, and if all administrative appeals are not 2429
yet exhausted when the employer inquires, the appropriate bureau 2430
personnel shall inform the inquiring employer of the denial, 2431
revocation, or rescission and the fact that the alternate 2432
employer organization has the right to appeal the 2433
administrator's decision. 2434

(C) Upon revocation of the registration of an alternate 2435
employer organization, each client employer associated with that 2436
alternate employer organization shall file payroll reports and 2437
pay workers' compensation premiums directly to the administrator 2438
on its own behalf at a rate determined by the administrator 2439
based solely on the claims experience of the client employer. 2440

(D) Upon revocation of an alternate employer 2441
organization's registration, each client employer associated 2442
with that alternate employer organization shall file on its own 2443
behalf the appropriate documents or data with all state and 2444
federal agencies as required by law with respect to any worksite 2445
employee the client employer and the alternate employer 2446
organization shared. 2447

Sec. 4133.10. (A) As used in this section, "self-insuring 2448
employer" has the same meaning as in section 4123.01 of the 2449

Revised Code. 2450

(B) Not later than thirty calendar days after the date on 2451
which an alternate employer organization agreement is 2452
terminated, the alternate employer organization is adjudged 2453
bankrupt, the alternate employer organization ceases operations 2454
within the state of Ohio, or the registration of the alternate 2455
employer organization is revoked, the alternate employer 2456
organization shall submit to the administrator of workers' 2457
compensation and each client employer associated with that 2458
alternate employer organization a completed workers' 2459
compensation lease termination notice form provided by the 2460
administrator. The completed form shall include all client 2461
payroll and claim information listed in a format specified by 2462
the administrator and notice of all workers' compensation claims 2463
that have been reported to the alternate employer organization 2464
in accordance with its internal reporting policies. 2465

(C) (1) If a alternate employer organization that is a 2466
self-insuring employer is required to submit a workers' 2467
compensation lease termination notice form under division (B) of 2468
this section, not later than thirty calendar days after the 2469
lease termination the alternate employer organization shall 2470
submit all of the following to the administrator for any years 2471
necessary for the administrator to develop a state fund 2472
experience modification factor for each client employer involved 2473
in the lease termination: 2474

(a) The payroll of each client employer involved in the 2475
lease termination, organized by manual classification and year; 2476

(b) The medical and indemnity costs of each client 2477
employer involved in the lease termination, organized by claim; 2478

(c) Any other information the administrator may require to 2479
develop a state fund experience modification factor for each 2480
client employer involved in the lease termination. 2481

(2) The administrator may require an alternate employer 2482
organization to submit the information required under division 2483
(C) (1) of this section at additional times after the initial 2484
submission if the administrator determines that the information 2485
is necessary for the administrator to develop a state fund 2486
experience modification factor. 2487

(3) The administrator may revoke or refuse to renew an 2488
alternate employer organization's status as a self-insuring 2489
employer if the alternate employer organization fails to provide 2490
information requested by the administrator under division (C) (1) 2491
or (2) of this section. 2492

(D) The administrator shall use the information provided 2493
under division (C) of this section to develop a state fund 2494
experience modification factor for each client employer involved 2495
in a lease termination with an alternate employer organization 2496
that is a self-insuring employer. 2497

(E) An alternate employer organization shall report any 2498
transfer of employees between related alternate employer 2499
organization entities to the administrator within fourteen 2500
calendar days after the date of the transfer on a form 2501
prescribed by the administrator. The alternate employer 2502
organization shall include in the form all client payroll and 2503
claim information regarding the transferred employees listed in 2504
a format specified by the administrator and a notice of all 2505
workers' compensation claims that have been reported to the 2506
alternate employer organization in accordance with the internal 2507
reporting policies of the alternate employer organization. 2508

(F) Prior to entering into an alternate employer organization agreement with a client employer, an alternate employer organization shall disclose in writing to the client employer the reporting requirements that apply to the alternate employer organization under division (C) of this section and that the administrator must develop a state fund experience modification factor for each client employer involved in a lease termination with an alternate employer organization that is a self-insuring employer. 2509
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Sec. 4133.11. Nothing in this chapter exempts an alternate employer organization, client employer, or worksite employee from any applicable federal, state, or local licensing, registration, or certification statutes or regulations. An individual required to obtain and maintain a license, registration, or certification under law and who is a worksite employee of an alternate employer organization and a client employer is an employee of the client employer for purposes of obtaining and maintaining the appropriate license, registration, or certification as required by law. An alternate employer organization does not engage in any occupation, trade, or profession that requires a license, certification, or registration solely by entering into an alternate employer organization agreement with a client employer or employing a worksite employee. 2518
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A client employer shall have the sole right of direction and control of the professional or licensed activities of worksite employees and of the client employer's business. The worksite employees and client employers shall remain subject to regulation by the board, commission, or agency responsible for licensing, registration, or certification of the worksite employees or client employers. 2533
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Sec. 4133.12. Nothing contained in this chapter or in any 2540
alternate employer organization agreement shall affect, modify, 2541
or amend any collective bargaining agreement that exists on the 2542
effective date of this section. Nothing in this chapter shall 2543
alter the rights or obligations of any client employer, 2544
alternate employer organization, or worksite employee under the 2545
"National Labor Relations Act," 49 Stat. 449, 29 U.S.C. 151 et 2546
seq., the "Railway Labor Act," 44 Stat. 577, 45 U.S.C. 151, or 2547
any other applicable federal or state law. 2548

Sec. 4133.13. Nothing contained in this chapter or in any 2549
alternate employer organization agreement shall do any of the 2550
following: 2551

(A) Diminish, abolish, or remove the rights and 2552
obligations of client employers and worksite employees existing 2553
prior to the effective date of the alternate employer 2554
organization agreement; 2555

(B) Affect, modify, or amend any contractual relationship 2556
or restrictive covenant between a worksite employee and any 2557
client employer in effect at the time an alternate employer 2558
organization agreement becomes effective; 2559

(C) Prohibit or amend any contractual relationship or 2560
restrictive covenant between a client employer and a worksite 2561
employee that is entered into after the alternate employer 2562
organization agreement becomes effective; 2563

(D) Create any new or additional enforcement right of a 2564
worksite employee against an alternate employer organization 2565
that is not specifically provided by the alternate employer 2566
organization agreement or this chapter. 2567

An alternate employer organization shall have no 2568

responsibility or liability in connection with, or arising out 2569
of, any contractual relationship or restrictive covenant between 2570
a client employer and a worksite employee unless the alternate 2571
employer organization has specifically agreed otherwise in 2572
writing. 2573

Sec. 4133.14. For purposes of a bid, contract, purchase 2574
order, or agreement entered into with the state or any political 2575
subdivision, a client employer's status or certification as a 2576
small, minority-owned, disadvantaged, or women-owned business 2577
enterprise or as a historically underutilized business shall not 2578
be affected as a result of the client employer entering into an 2579
alternate employer organization agreement or using the services 2580
of an alternate employer organization. 2581

Sec. 4133.99. Whoever recklessly violates division (A) of 2582
section 4133.07 of the Revised Code is guilty of a minor 2583
misdemeanor. Whoever knowingly violates division (A) of section 2584
4133.07 of the Revised Code is guilty of a misdemeanor of the 2585
second degree. 2586

Sec. 4141.24. (A) (1) The director of job and family 2587
services shall maintain a separate account for each employer 2588
and, except as otherwise provided in division (B) of section 2589
4141.25 of the Revised Code respecting mutualized contributions, 2590
shall credit such employer's account with all the contributions, 2591
or payments in lieu of contributions, which the employer has 2592
paid on the employer's own behalf. 2593

(2) If, as of the computation date, a contributory 2594
employer's account shows a negative balance computed as provided 2595
in division (A) (3) of section 4141.25 of the Revised Code, less 2596
any contributions due and unpaid on such date, which negative 2597
balance is in excess of the limitations imposed by divisions (A) 2598

(2) (a), (b), and (c) of this section and if the employer's 2599
account is otherwise eligible for the transfer, then before the 2600
employer's contribution rate is computed for the next succeeding 2601
contribution period, an amount equal to the amount of the excess 2602
eligible for transfer shall be permanently transferred from the 2603
account of such employer and charged to the mutualized account 2604
provided in division (B) of section 4141.25 of the Revised Code. 2605

(a) If as of any computation date, a contributory 2606
employer's account shows a negative balance in excess of ten per 2607
cent of the employer's average annual payroll, then before the 2608
employer's contribution rate is computed for the next succeeding 2609
contribution period, an amount equal to the amount of the excess 2610
shall be transferred from the account as provided in this 2611
division. No contributory employer's account may have any excess 2612
transferred pursuant to division (A) (2) (a) of this section, 2613
unless the employer's account has shown a positive balance for 2614
at least two consecutive computation dates prior to the 2615
computation date with respect to which the transfer is proposed. 2616
Each time a transfer is made pursuant to division (A) (2) (a) of 2617
this section, the employer's account is ineligible for any 2618
additional transfers under that division, until the account 2619
shows a positive balance for at least two consecutive 2620
computation dates subsequent to the computation date of which 2621
the most recent transfer occurs pursuant to division (A) (2) (a), 2622
(b), or (c) of this section. 2623

(b) If at the next computation date after the computation 2624
date at which a transfer from the account occurs pursuant to 2625
division (A) (2) (a) of this section, a contributory employer's 2626
account shows a negative balance in excess of fifteen per cent 2627
of the employer's average annual payroll, then before the 2628
employer's contribution rate is computed for the next succeeding 2629

contribution period an amount equal to the amount of the excess 2630
shall be permanently transferred from the account as provided in 2631
this division. 2632

(c) If at the next computation date subsequent to the 2633
computation date at which a transfer from a contributory 2634
employer's account occurs pursuant to division (A) (2) (b) of this 2635
section, the employer's account shows a negative balance in 2636
excess of twenty per cent of the employer's average annual 2637
payroll, then before the employer's contribution rate is 2638
computed for the next succeeding contribution period, an amount 2639
equal to the amount of the excess shall be permanently 2640
transferred from the account as provided in this division. 2641

(d) If no transfer occurs pursuant to division (A) (2) (b) 2642
or (c) of this section, the employer's account is ineligible for 2643
any additional transfers under division (A) (2) of this section 2644
until the account requalifies for a transfer pursuant to 2645
division (A) (2) (a) of this section. 2646

(B) Any employer may make voluntary payments in addition 2647
to the contributions required under this chapter, in accordance 2648
with rules established by the director. Such payments shall be 2649
included in the employer's account as of the computation date, 2650
provided they are received by the director by the thirty-first 2651
day of December following such computation date. Such voluntary 2652
payment, when accepted from an employer, will not be refunded in 2653
whole or in part. In determining whether an employer's account 2654
has a positive balance on two consecutive computation dates and 2655
is eligible for transfers under division (A) (2) of this section, 2656
the director shall exclude any voluntary payments made 2657
subsequent to the last transfer made under division (A) (2) of 2658
this section. 2659

(C) All contributions to the fund shall be pooled and 2660
available to pay benefits to any individual entitled to benefits 2661
irrespective of the source of such contributions. 2662

(D) (1) For the purposes of this section and sections 2663
4141.241 and 4141.242 of the Revised Code, an employer's account 2664
shall be charged only for benefits based on remuneration paid by 2665
such employer. Benefits paid to an eligible individual shall be 2666
charged against the account of each employer within the 2667
claimant's base period in the proportion to which wages 2668
attributable to each employer of the claimant bears to the 2669
claimant's total base period wages. Charges to the account of a 2670
base period employer with whom the claimant is employed part- 2671
time at the time the claimant's application for a determination 2672
of benefits rights is filed shall be charged to the mutualized 2673
account when all of the following conditions are met: 2674

(a) The claimant also worked part-time for the employer 2675
during the base period of the claim. 2676

(b) The claimant is unemployed due to loss of other 2677
employment. 2678

(c) The employer is not a reimbursing employer under 2679
section 4141.241 or 4141.242 of the Revised Code. 2680

(2) Notwithstanding division (D) (1) of this section, 2681
charges to the account of any employer, including any 2682
reimbursing employer, shall be charged to the mutualized account 2683
if it finally is determined by a court on appeal that the 2684
employer's account is not chargeable for the benefits. 2685

(3) (a) Any benefits paid to a claimant under section 2686
4141.28 of the Revised Code prior to a final determination of 2687
the claimant's right to the benefits shall be charged to the 2688

employer's account as provided in division (D) (1) of this 2689
section, provided that if there is no final determination of the 2690
claim by the subsequent thirtieth day of June, the employer's 2691
account shall be credited with the total amount of benefits that 2692
has been paid prior to that date, based on the determination 2693
that has not become final. The total amount credited to the 2694
employer's account shall be charged to a suspense account, which 2695
shall be maintained as a separate bookkeeping account and 2696
administered as a part of this section, and shall not be used in 2697
determining the account balance of the employer for the purpose 2698
of computing the employer's contribution rate under section 2699
4141.25 of the Revised Code. 2700

(b) If it is finally determined that the claimant is 2701
entitled to all or a part of the benefits in dispute, the 2702
suspense account shall be credited and the appropriate 2703
employer's account charged with the benefits. If it is finally 2704
determined that the claimant is not entitled to all or any 2705
portion of the benefits in dispute, the benefits shall be 2706
credited to the suspense account and, except as provided in 2707
division (D) (3) (d) of this section, a corresponding charge made 2708
to the mutualized account established in division (B) of section 2709
4141.25 of the Revised Code, provided that, except as otherwise 2710
provided in this section, if benefits are chargeable to an 2711
employer or group of employers who is required or elects to make 2712
payments to the fund in lieu of contributions under section 2713
4141.241 of the Revised Code, the benefits shall be charged to 2714
the employer's account in the manner provided in division (D) (1) 2715
of this section and division (B) of section 4141.241 of the 2716
Revised Code, and no part of the benefits may be charged to the 2717
suspense account provided in this division. 2718

(c) Except as provided in division (D) (3) (d) of this 2719

section, to the extent that benefits that have been paid to a 2720
claimant and charged to the employer's account are found not to 2721
be due the claimant and are recovered by the director as 2722
provided in section 4141.35 of the Revised Code, they shall be 2723
credited to the employer's account. 2724

(d) (i) An employer's account shall not be credited for 2725
amounts recovered by the director pursuant to division (D) (3) (c) 2726
of this section, and the mutualized account established in 2727
division (B) of section 4141.25 of the Revised Code shall not be 2728
charged pursuant to division (D) (3) (b) of this section, for 2729
benefits that have been paid to a claimant and are subsequently 2730
found not to be due to the claimant, if it is determined by the 2731
director, on or after October 21, 2013, that both of the 2732
following have occurred: 2733

(I) The benefits were paid because the claimant's 2734
employer, or any employee, officer, or agent of that employer, 2735
failed to respond timely or adequately to a request for 2736
information regarding a determination of benefit rights or 2737
claims for benefits under section 4141.28 of the Revised Code. 2738

(II) The claimant's employer, or any employee, officer, or 2739
agent of that employer, on behalf of the employer, previously 2740
established a pattern of failing to respond timely or adequately 2741
within the same calendar year period pursuant to division (D) (3) 2742
(d) (ii) (III) of this section. 2743

(ii) For purposes of division (D) (3) (d) of this section: 2744

(I) A response is considered "timely" if the response is 2745
received by the director within the time provided under section 2746
4141.28 of the Revised Code. 2747

(II) A response is considered "adequate" if the employer 2748

or employee, officer, or agent of that employer provided answers 2749
to all questions raised by the director pursuant to section 2750
4141.28 of the Revised Code or participated in a fact-finding 2751
interview if requested by the director. 2752

(III) A "pattern of failing" is established after the 2753
third instance of benefits being paid because the claimant's 2754
employer, or any employee, officer, or agent of that employer, 2755
on behalf of the employer, failed to respond timely or 2756
adequately to a request for information regarding a 2757
determination of benefit rights or claims for benefits under 2758
section 4141.28 of the Revised Code within a calendar year 2759
period. 2760

(e) If the mutualized account established in division (B) 2761
of section 4141.25 of the Revised Code is not charged for 2762
benefits credited to a suspense account pursuant to division (D) 2763
(3)(d) of this section, a corresponding charge shall be made to 2764
the account of the employer whose failure to timely or 2765
adequately respond to a request for information caused the 2766
erroneous payment. 2767

(f) The appeal provisions of sections 4141.281 and 2768
4141.282 of the Revised Code shall apply to all determinations 2769
issued under division (D) (3) (d) of this section. 2770

(4) The director shall notify each employer at least once 2771
each month of the benefits charged to the employer's account 2772
since the last preceding notice; except that for the purposes of 2773
sections 4141.241 and 4141.242 of the Revised Code which 2774
provides the billing of employers on a payment in lieu of a 2775
contribution basis, the director may prescribe a quarterly or 2776
less frequent notice of benefits charged to the employer's 2777
account. Such notice will show a summary of the amount of 2778

benefits paid which were charged to the employer's account. This 2779
notice shall not be deemed a determination of the claimant's 2780
eligibility for benefits. Any employer so notified, however, may 2781
file within fifteen days after the mailing date of the notice, 2782
an exception to charges appearing on the notice on the grounds 2783
that such charges are not in accordance with this section. The 2784
director shall promptly examine the exception to such charges 2785
and shall notify the employer of the director's decision 2786
thereon, which decision shall become final unless appealed to 2787
the unemployment compensation review commission in the manner 2788
provided in section 4141.26 of the Revised Code. For the 2789
purposes of this division, an exception is considered timely 2790
filed when it has been received as provided in division (D) (1) 2791
of section 4141.281 of the Revised Code. 2792

(E) The director shall terminate and close the account of 2793
any contributory employer who has been subject to this chapter 2794
if the enterprise for which the account was established is no 2795
longer in operation and it has had no payroll and its account 2796
has not been chargeable with benefits for a period of five 2797
consecutive years. The amount of any positive balance, computed 2798
as provided in division (A) (3) of section 4141.25 of the Revised 2799
Code, in an account closed and terminated as provided in this 2800
section shall be credited to the mutualized account as provided 2801
in division (B) (2) (b) of section 4141.25 of the Revised Code. 2802
The amount of any negative balance, computed as provided in 2803
division (A) (3) of section 4141.25 of the Revised Code, in an 2804
account closed and terminated as provided in this section shall 2805
be charged to the mutualized account as provided in division (B) 2806
(1) (b) of section 4141.25 of the Revised Code. The amount of any 2807
positive balance or negative balance, credited or charged to the 2808
mutualized account after the termination and closing of an 2809

employer's account, shall not thereafter be considered in 2810
determining the contribution rate of such employer. The closing 2811
of an employer's account as provided in this division shall not 2812
relieve such employer from liability for any unpaid 2813
contributions or payment in lieu of contributions which are due 2814
for periods prior to such closing. 2815

If the director finds that a contributory employer's 2816
business is closed solely because of the entrance of one or more 2817
of the owners, officers, or partners, or the majority 2818
stockholder, into the armed forces of the United States, or any 2819
of its allies, or of the United Nations after July 1, 1950, such 2820
employer's account shall not be terminated and if the business 2821
is resumed within two years after the discharge or release of 2822
such persons from active duty in the armed forces, the 2823
employer's experience shall be deemed to have been continuous 2824
throughout such period. The reserve ratio of any such employer 2825
shall be the total contributions paid by such employer minus all 2826
benefits, including benefits paid to any individual during the 2827
period such employer was in the armed forces, based upon wages 2828
paid by the employer prior to the employer's entrance into the 2829
armed forces divided by the average of the employer's annual 2830
payrolls for the three most recent years during the whole of 2831
which the employer has been in business. 2832

(F) If an employer transfers all of its trade or business 2833
to another employer or person, the acquiring employer or person 2834
shall be the successor in interest to the transferring employer 2835
and shall assume the resources and liabilities of such 2836
transferring employer's account, and continue the payment of all 2837
contributions, or payments in lieu of contributions, due under 2838
this chapter. 2839

If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, shall be the successor in interest. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

(G) Notwithstanding sections 4141.09, 4141.23, 4141.24, 4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised Code, both of the following apply regarding assignment of rates and transfers of experience:

(1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, both employers are under substantially common ownership, management, or control, then the unemployment experience attributable to the transferred trade or business, or portion thereof, shall be transferred to the employer to whom the business is so transferred. The director shall recalculate the rates of both employers and those rates shall be effective immediately upon the date of the transfer of the trade or business.

(2) Whenever a person is not an employer under this chapter at the time the person acquires the trade or business of an employer, the unemployment experience of the acquired trade or business shall not be transferred to the person if the director finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, that person shall be assigned the applicable new employer rate under division (A)(1) of section

4141.25 of the Revised Code. 2870

(H) The director shall establish procedures to identify 2871
the transfer or acquisition of a trade or business for purposes 2872
of this section and shall adopt rules prescribing procedures for 2873
effecting transfers of experience as described in this section. 2874

(I) No rate of contribution less than two and seven-tenths 2875
per cent shall be permitted a contributory employer succeeding 2876
to the experience of another contributory employer pursuant to 2877
this section for any period subsequent to such succession, 2878
except in accordance with rules prescribed by the director, 2879
which rules shall be consistent with federal requirements for 2880
additional credit allowance in section 3303 of the "Internal 2881
Revenue Code of 1954" and consistent with this chapter, except 2882
that such rules may establish a computation date for any such 2883
period different from the computation date generally prescribed 2884
by this chapter, and may define "calendar year" as meaning a 2885
twelve-consecutive-month period ending on the same day of the 2886
year as that on which such computation date occurs. 2887

(J) The director may prescribe rules for the 2888
establishment, maintenance, and dissolution of common 2889
contribution rates for two or more contributory employers, and 2890
in accordance with such rules and upon application by two or 2891
more employers shall establish such common rate to be computed 2892
by merging the several contribution rate factors of such 2893
employers for the purpose of establishing a common contribution 2894
rate applicable to all such employers. 2895

(K) The director shall adopt rules applicable to 2896
professional employer organizations and professional employer 2897
organization reporting entities to address the method in which a 2898
professional employer organization or professional employer 2899

organization reporting entity reports quarterly wages and 2900
contributions to the director for shared employees. 2901

(1) The rules shall recognize a professional employer 2902
organization or professional employer organization reporting 2903
entity as the employer of record of the shared employees of the 2904
professional employer organization or professional employer 2905
organization reporting entity for reporting purposes; however, 2906
the rules shall require that each shared employee of a single 2907
client employer be reported under a separate and unique 2908
subaccount of the professional employer organization or 2909
professional employer organization reporting entity to reflect 2910
the experience of the shared employees of that client employer. 2911

(2) The director shall use a subaccount solely to 2912
determine experience rates for that individual subaccount on an 2913
annual basis and shall recognize a professional employer 2914
organization or professional employer organization reporting 2915
entity as the employer of record associated with each 2916
subaccount. The director shall combine the rate experience that 2917
existed on a client employer's account prior to entering into a 2918
professional employer organization agreement with the experience 2919
accumulated as a subaccount of the professional employer 2920
organization or professional employer organization reporting 2921
entity. The combined experience shall remain with the client 2922
account upon termination of the professional employer 2923
organization agreement. 2924

(3) A professional employer organization or professional 2925
employer organization reporting entity shall provide a power of 2926
attorney or other evidence, which evidence may be included as 2927
part of a professional employer organization agreement, 2928
completed by each client employer of the professional employer 2929

organization or professional employer organization reporting 2930
entity, authorizing the professional employer organization or 2931
professional employer organization reporting entity to act on 2932
behalf of the client employer in accordance with the 2933
requirements of this chapter. 2934

(4) Any rule adopted pursuant to division (K) of this 2935
section also shall include administrative requirements that 2936
permit a professional employer organization or a professional 2937
employer organization reporting entity to transmit any reporting 2938
and payment data required under division (K) (1) of this section 2939
collectively as a single filing with the director. 2940

(5) As used in division (K) of this section, "client 2941
employer," "professional employer organization," "professional 2942
employer organization agreement," "professional employer 2943
organization reporting entity," and "shared employee" have the 2944
same meanings as in section 4125.01 of the Revised Code. 2945

(L) The director shall adopt rules applicable to alternate 2946
employer organizations as defined in section 4133.01 of the 2947
Revised Code that are consistent with the requirements of and 2948
rules adopted under division (K) of this section. 2949

Sec. 4740.131. Nothing in this chapter shall be construed 2950
to prohibit a contractor from leasing, on a temporary or 2951
permanent basis, an employee from a professional employer 2952
organization, as defined by section 4125.01 of the Revised Code, 2953
from an alternate employer organization, as defined by section 2954
4133.01 of the Revised Code, or from a temporary agency to 2955
perform work under the direct supervision of the contractor. 2956

Sec. 5733.40. As used in sections 5733.40 and 5733.41 and 2957
Chapter 5747. of the Revised Code: 2958

(A) (1) "Adjusted qualifying amount" means either of the 2959
following: 2960

(a) The sum of each qualifying investor's distributive 2961
share of the income, gain, expense, or loss of a qualifying 2962
pass-through entity for the qualifying taxable year of the 2963
qualifying pass-through entity multiplied by the apportionment 2964
fraction defined in division (B) of this section, subject to 2965
section 5733.401 of the Revised Code and divisions (A) (2) to (7) 2966
of this section; 2967

(b) The sum of each qualifying beneficiary's share of the 2968
qualifying net income and qualifying net gain distributed by a 2969
qualifying trust for the qualifying taxable year of the 2970
qualifying trust multiplied by the apportionment fraction 2971
defined in division (B) of this section, subject to section 2972
5733.401 of the Revised Code and divisions (A) (2) to (7) of this 2973
section. 2974

(2) The sum shall exclude any amount which, pursuant to 2975
the Constitution of the United States, the Constitution of Ohio, 2976
or any federal law is not subject to a tax on or measured by net 2977
income. 2978

(3) For the purposes of Chapters 5733. and 5747. of the 2979
Revised Code, the profit or net income of the qualifying entity 2980
shall be increased by disallowing all amounts representing 2981
expenses, other than amounts described in division (A) (7) of 2982
this section, that the qualifying entity paid to or incurred 2983
with respect to direct or indirect transactions with one or more 2984
related members, excluding the cost of goods sold calculated in 2985
accordance with section 263A of the Internal Revenue Code and 2986
United States department of the treasury regulations issued 2987
thereunder. Nothing in division (A) (3) of this section shall be 2988

construed to limit solely to this chapter the application of 2989
section 263A of the Internal Revenue Code and United States 2990
department of the treasury regulations issued thereunder. 2991

(4) For the purposes of Chapters 5733. and 5747. of the 2992
Revised Code, the profit or net income of the qualifying entity 2993
shall be increased by disallowing all recognized losses, other 2994
than losses from sales of inventory the cost of which is 2995
calculated in accordance with section 263A of the Internal 2996
Revenue Code and United States department of the treasury 2997
regulations issued thereunder, with respect to all direct or 2998
indirect transactions with one or more related members. For the 2999
purposes of Chapters 5733. and 5747. of the Revised Code, losses 3000
from the sales of such inventory shall be allowed only to the 3001
extent calculated in accordance with section 482 of the Internal 3002
Revenue Code and United States department of the treasury 3003
regulations issued thereunder. Nothing in division (A) (4) of 3004
this section shall be construed to limit solely to this section 3005
the application of section 263A and section 482 of the Internal 3006
Revenue Code and United States department of the treasury 3007
regulations issued thereunder. 3008

(5) The sum shall be increased or decreased by an amount 3009
equal to the qualifying investor's or qualifying beneficiary's 3010
distributive or proportionate share of the amount that the 3011
qualifying entity would be required to add or deduct under 3012
divisions (A) (17) and (18) of section 5747.01 of the Revised 3013
Code if the qualifying entity were a taxpayer for the purposes 3014
of Chapter 5747. of the Revised Code. 3015

(6) The sum shall be computed without regard to section 3016
5733.051 or division (D) of section 5733.052 of the Revised 3017
Code. 3018

(7) For the purposes of Chapters 5733. and 5747. of the Revised Code, guaranteed payments or compensation paid to investors by a qualifying entity that is not subject to the tax imposed by section 5733.06 of the Revised Code shall be considered a distributive share of income of the qualifying entity. Division (A)(7) of this section applies only to such payments or such compensation paid to an investor who at any time during the qualifying entity's taxable year holds at least a twenty per cent direct or indirect interest in the profits or capital of the qualifying entity. For the purposes of this division, guaranteed payments and compensation shall be considered to be paid to an investor by a qualifying entity if the qualifying entity in which the investor holds at least a twenty per cent direct or indirect interest is a client employer of a professional employer organization or alternate employer organization, as those terms are defined in section 4125.01 or 4133.01 of the Revised Code, as applicable, and the guaranteed payments or compensation are paid to the investor by that professional employer organization or alternate employer organization.

(B) "Apportionment fraction" means:

(1) With respect to a qualifying pass-through entity other than a financial institution, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying pass-through entity were a corporation subject to the tax imposed by section 5733.06 of the Revised Code;

(2) With respect to a qualifying pass-through entity that is a financial institution, the fraction calculated pursuant to division (C) of section 5733.056 of the Revised Code as if the qualifying pass-through entity were a financial institution

subject to the tax imposed by section 5733.06 of the Revised Code;
Code-; 3049
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(3) With respect to a qualifying trust, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying trust were a corporation subject to the tax imposed by section 5733.06 of the Revised Code, except that the property, payroll, and sales fractions shall be calculated by including in the numerator and denominator of the fractions only the property, payroll, and sales, respectively, directly related to the production of income or gain from acquisition, ownership, use, maintenance, management, or disposition of tangible personal property located in this state at any time during the qualifying trust's qualifying taxable year or of real property located in this state. 3051
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(C) "Qualifying beneficiary" means any individual that, during the qualifying taxable year of a qualifying trust, is a beneficiary of that trust, but does not include an individual who is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for the entire qualifying taxable year of the qualifying trust. 3064
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(D) "Fiscal year" means an accounting period ending on any day other than the thirty-first day of December. 3070
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(E) "Individual" means a natural person. 3072

(F) "Month" means a calendar month. 3073

(G) "Distributive share" includes the sum of the income, gain, expense, or loss of a disregarded entity or qualified subchapter S subsidiary. 3074
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(H) "Investor" means any person that, during any portion 3077

of a taxable year of a qualifying pass-through entity, is a 3078
partner, member, shareholder, or investor in that qualifying 3079
pass-through entity. 3080

(I) Except as otherwise provided in section 5733.402 or 3081
5747.401 of the Revised Code, "qualifying investor" means any 3082
investor except those described in divisions (I) (1) to (9) of 3083
this section. 3084

(1) An investor satisfying one of the descriptions under 3085
section 501(a) or (c) of the Internal Revenue Code, a 3086
partnership with equity securities registered with the United 3087
States securities and exchange commission under section 12 of 3088
the "Securities Exchange Act of 1934," as amended, or an 3089
investor described in division (F) of section 3334.01, or 3090
division (A) or (C) of section 5733.09 of the Revised Code for 3091
the entire qualifying taxable year of the qualifying pass- 3092
through entity. 3093

(2) An investor who is either an individual or an estate 3094
and is a resident taxpayer for the purposes of section 5747.01 3095
of the Revised Code for the entire qualifying taxable year of 3096
the qualifying pass-through entity. 3097

(3) An investor who is an individual for whom the 3098
qualifying pass-through entity makes a good faith and reasonable 3099
effort to comply fully and timely with the filing and payment 3100
requirements set forth in division (D) of section 5747.08 of the 3101
Revised Code and section 5747.09 of the Revised Code with 3102
respect to the individual's adjusted qualifying amount for the 3103
entire qualifying taxable year of the qualifying pass-through 3104
entity. 3105

(4) An investor that is another qualifying pass-through 3106

entity having only investors described in division (I) (1), (2), 3107
(3), or (6) of this section during the three-year period 3108
beginning twelve months prior to the first day of the qualifying 3109
taxable year of the qualifying pass-through entity. 3110

(5) An investor that is another pass-through entity having 3111
no investors other than individuals and estates during the 3112
qualifying taxable year of the qualifying pass-through entity in 3113
which it is an investor, and that makes a good faith and 3114
reasonable effort to comply fully and timely with the filing and 3115
payment requirements set forth in division (D) of section 3116
5747.08 of the Revised Code and section 5747.09 of the Revised 3117
Code with respect to investors that are not resident taxpayers 3118
of this state for the purposes of Chapter 5747. of the Revised 3119
Code for the entire qualifying taxable year of the qualifying 3120
pass-through entity in which it is an investor. 3121

(6) An investor that is treated as a C corporation for 3122
federal income tax purposes for the entire qualifying taxable 3123
year of the qualifying pass-through entity in which it is an 3124
investor. 3125

(7) An investor other than an individual that satisfies 3126
all the following: 3127

(a) The investor submits a written statement to the 3128
qualifying pass-through entity stating that the investor 3129
irrevocably agrees that the investor has nexus with this state 3130
under the Constitution of the United States and is subject to 3131
and liable for the tax calculated under division (A) or (B) of 3132
section 5733.06 of the Revised Code with respect to the 3133
investor's adjusted qualifying amount for the entire qualifying 3134
taxable year of the qualifying pass-through entity. The 3135
statement is subject to the penalties of perjury, shall be 3136

retained by the qualifying pass-through entity for no fewer than 3137
seven years, and shall be delivered to the tax commissioner upon 3138
request. 3139

(b) The investor makes a good faith and reasonable effort 3140
to comply timely and fully with all the reporting and payment 3141
requirements set forth in Chapter 5733. of the Revised Code with 3142
respect to the investor's adjusted qualifying amount for the 3143
entire qualifying taxable year of the qualifying pass-through 3144
entity. 3145

(c) Neither the investor nor the qualifying pass-through 3146
entity in which it is an investor, before, during, or after the 3147
qualifying pass-through entity's qualifying taxable year, 3148
carries out any transaction or transactions with one or more 3149
related members of the investor or the qualifying pass-through 3150
entity resulting in a reduction or deferral of tax imposed by 3151
Chapter 5733. of the Revised Code with respect to all or any 3152
portion of the investor's adjusted qualifying amount for the 3153
qualifying pass-through entity's taxable year, or that 3154
constitute a sham, lack economic reality, or are part of a 3155
series of transactions the form of which constitutes a step 3156
transaction or transactions or does not reflect the substance of 3157
those transactions. 3158

(8) Any other investor that the tax commissioner may 3159
designate by rule. The tax commissioner may adopt rules 3160
including a rule defining "qualifying investor" or "qualifying 3161
beneficiary" and governing the imposition of the withholding tax 3162
imposed by section 5747.41 of the Revised Code with respect to 3163
an individual who is a resident taxpayer for the purposes of 3164
Chapter 5747. of the Revised Code for only a portion of the 3165
qualifying taxable year of the qualifying entity. 3166

(9) An investor that is a trust or fund the beneficiaries 3167
of which, during the qualifying taxable year of the qualifying 3168
pass-through entity, are limited to the following: 3169

(a) A person that is or may be the beneficiary of a trust 3170
subject to Subchapter D of Chapter 1 of Subtitle A of the 3171
Internal Revenue Code. 3172

(b) A person that is or may be the beneficiary of or the 3173
recipient of payments from a trust or fund that is a nuclear 3174
decommissioning reserve fund, a designated settlement fund, or 3175
any other trust or fund established to resolve and satisfy 3176
claims that may otherwise be asserted by the beneficiary or a 3177
member of the beneficiary's family. Sections 267(c)(4), 468A(e), 3178
and 468B(d)(2) of the Internal Revenue Code apply to the 3179
determination of whether such a person satisfies division (I)(9) 3180
of this section. 3181

(c) A person who is or may be the beneficiary of a trust 3182
that, under its governing instrument, is not required to 3183
distribute all of its income currently. Division (I)(9)(c) of 3184
this section applies only if the trust, prior to the due date 3185
for filing the qualifying pass-through entity's return for taxes 3186
imposed by section 5733.41 and sections 5747.41 to 5747.453 of 3187
the Revised Code, irrevocably agrees in writing that for the 3188
taxable year during or for which the trust distributes any of 3189
its income to any of its beneficiaries, the trust is a 3190
qualifying trust and will pay the estimated tax, and will 3191
withhold and pay the withheld tax, as required under sections 3192
5747.40 to 5747.453 of the Revised Code. 3193

For the purposes of division (I)(9) of this section, a 3194
trust or fund shall be considered to have a beneficiary other 3195
than persons described under divisions (I)(9)(a) to (c) of this 3196

section if a beneficiary would not qualify under those divisions 3197
under the doctrines of "economic reality," "sham transaction," 3198
"step doctrine," or "substance over form." A trust or fund 3199
described in division (I) (9) of this section bears the burden of 3200
establishing by a preponderance of the evidence that any 3201
transaction giving rise to the tax benefits provided under 3202
division (I) (9) of this section does not have as a principal 3203
purpose a claim of those tax benefits. Nothing in this section 3204
shall be construed to limit solely to this section the 3205
application of the doctrines referred to in this paragraph. 3206

(J) "Qualifying net gain" means any recognized net gain 3207
with respect to the acquisition, ownership, use, maintenance, 3208
management, or disposition of tangible personal property located 3209
in this state at any time during a trust's qualifying taxable 3210
year or real property located in this state. 3211

(K) "Qualifying net income" means any recognized income, 3212
net of related deductible expenses, other than distributions 3213
deductions with respect to the acquisition, ownership, use, 3214
maintenance, management, or disposition of tangible personal 3215
property located in this state at any time during the trust's 3216
qualifying taxable year or real property located in this state. 3217

(L) "Qualifying entity" means a qualifying pass-through 3218
entity or a qualifying trust. 3219

(M) "Qualifying trust" means a trust subject to subchapter 3220
J of the Internal Revenue Code that, during any portion of the 3221
trust's qualifying taxable year, has income or gain from the 3222
acquisition, management, ownership, use, or disposition of 3223
tangible personal property located in this state at any time 3224
during the trust's qualifying taxable year or real property 3225
located in this state. "Qualifying trust" does not include a 3226

person described in section 501(c) of the Internal Revenue Code 3227
or a person described in division (C) of section 5733.09 of the 3228
Revised Code. 3229

(N) "Qualifying pass-through entity" means a pass-through 3230
entity as defined in section 5733.04 of the Revised Code, 3231
excluding: a person described in section 501(c) of the Internal 3232
Revenue Code; a partnership with equity securities registered 3233
with the United States securities and exchange commission under 3234
section 12 of the Securities Exchange Act of 1934, as amended; 3235
or a person described in division (C) of section 5733.09 of the 3236
Revised Code. 3237

(O) "Quarter" means the first three months, the second 3238
three months, the third three months, or the last three months 3239
of a qualifying entity's qualifying taxable year. 3240

(P) "Related member" has the same meaning as in division 3241
(A) (6) of section 5733.042 of the Revised Code without regard to 3242
division (B) of that section. However, for the purposes of 3243
divisions (A) (3) and (4) of this section only, "related member" 3244
has the same meaning as in division (A) (6) of section 5733.042 3245
of the Revised Code without regard to division (B) of that 3246
section, but shall be applied by substituting "forty per cent" 3247
for "twenty per cent" wherever "twenty per cent" appears in 3248
division (A) of that section. 3249

(Q) "Return" or "report" means the notifications and 3250
reports required to be filed pursuant to sections 5747.42 to 3251
5747.45 of the Revised Code for the purpose of reporting the tax 3252
imposed under section 5733.41 or 5747.41 of the Revised Code, 3253
and included declarations of estimated tax when so required. 3254

(R) "Qualifying taxable year" means the calendar year or 3255

the qualifying entity's fiscal year ending during the calendar 3256
year, or fractional part thereof, for which the adjusted 3257
qualifying amount is calculated pursuant to sections 5733.40 and 3258
5733.41 or sections 5747.40 to 5747.453 of the Revised Code. 3259

Sec. 5747.07. (A) As used in this section: 3260

(1) "Partial weekly withholding period" means a period 3261
during which an employer directly, indirectly, or constructively 3262
pays compensation to, or credits compensation to the benefit of, 3263
an employee, and that consists of a consecutive Saturday, 3264
Sunday, Monday, and Tuesday or a consecutive Wednesday, 3265
Thursday, and Friday. There are two partial weekly withholding 3266
periods each week, except that a partial weekly withholding 3267
period cannot extend from one calendar year into the next 3268
calendar year; if the first day of January falls on a day other 3269
than Saturday or Wednesday, the partial weekly withholding 3270
period ends on the thirty-first day of December and there are 3271
three partial weekly withholding periods during that week. 3272

(2) "Undeposited taxes" means the taxes an employer is 3273
required to deduct and withhold from an employee's compensation 3274
pursuant to section 5747.06 of the Revised Code that have not 3275
been remitted to the tax commissioner pursuant to this section 3276
or to the treasurer of state pursuant to section 5747.072 of the 3277
Revised Code. 3278

(3) A "week" begins on Saturday and concludes at the end 3279
of the following Friday. 3280

(4) ~~"Client employer," "professional"~~ "Professional 3281
employer organization," "professional employer organization 3282
agreement," and "professional employer organization reporting 3283
entity" have the same meanings as in section 4125.01 of the 3284

Revised Code. 3285

(5) "Alternate employer organization" and "alternate employer organization agreement" have the same meanings as in section 4133.01 of the Revised Code. 3286
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(6) "Client employer" has the same meaning as in section 4125.01 of the Revised Code in the context of a professional employer organization or a professional employer organization reporting entity, or the same meaning as in section 4133.01 of the Revised Code in the context of an alternate employer organization. 3289
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(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows: 3295
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(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code. 3300
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(2) Except as required by division (B) (1) of this section, an employer whose actual or required payments under this section were at least eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year shall make the payment of undeposited taxes within three banking days after the close of a partial 3308
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weekly withholding period during which the employer was required 3314
to deduct and withhold any amount under this chapter. If 3315
required under division (I) of this section, the payment shall 3316
be made by electronic funds transfer under section 5747.072 of 3317
the Revised Code. 3318

(3) Except as required by divisions (B)(1) and (2) of this 3319
section, if an employer's actual or required payments were more 3320
than two thousand dollars during the twelve-month period ending 3321
on the thirtieth day of June of the preceding calendar year, the 3322
employer shall make the payment of undeposited taxes for each 3323
month during which they were required to be withheld no later 3324
than fifteen days following the last day of that month. The 3325
employer shall file the return prescribed by the tax 3326
commissioner with the payment. 3327

(4) Except as required by divisions (B)(1), (2), and (3) 3328
of this section, an employer shall make the payment of 3329
undeposited taxes for each calendar quarter during which they 3330
were required to be withheld no later than the last day of the 3331
month following the last day of March, June, September, and 3332
December each year. The employer shall file the return 3333
prescribed by the tax commissioner with the payment. 3334

(C) The return and payment schedules prescribed by 3335
divisions (B)(1) and (2) of this section do not apply to the 3336
return and payment of undeposited school district income taxes 3337
arising from taxes levied pursuant to Chapter 5748. of the 3338
Revised Code. Undeposited school district income taxes shall be 3339
returned and paid pursuant to divisions (B)(3) and (4) of this 3340
section, as applicable. 3341

(D)(1) The requirements of division (B) of this section 3342
are met if the amount paid is not less than ninety-five per cent 3343

of the actual tax withheld or required to be withheld for the 3344
prior quarterly, monthly, or partial weekly withholding period, 3345
and the underpayment is not due to willful neglect. Any 3346
underpayment of withheld tax shall be paid within thirty days of 3347
the date on which the withheld tax was due without regard to 3348
division (D) (1) of this section. An employer described in 3349
division (B) (1) or (2) of this section shall make the payment by 3350
electronic funds transfer under section 5747.072 of the Revised 3351
Code. 3352

(2) If the tax commissioner believes that quarterly or 3353
monthly payments would result in a delay that might jeopardize 3354
the remittance of withholding payments, the commissioner may 3355
order that the payments be made weekly, or more frequently if 3356
necessary, and the payments shall be made no later than three 3357
banking days following the close of the period for which the 3358
jeopardy order is made. An order requiring weekly or more 3359
frequent payments shall be delivered to the employer personally 3360
or by certified mail and remains in effect until the 3361
commissioner notifies the employer to the contrary. 3362

(3) If compelling circumstances exist concerning the 3363
remittance of undeposited taxes, the commissioner may order the 3364
employer to make payments under any of the payment schedules 3365
under division (B) of this section. The order shall be delivered 3366
to the employer personally or by certified mail and shall remain 3367
in effect until the commissioner notifies the employer to the 3368
contrary. For purposes of division (D) (3) of this section, 3369
"compelling circumstances" exist if either or both of the 3370
following are true: 3371

(a) Based upon annualization of payments made or required 3372
to be made during the preceding calendar year and during the 3373

current calendar year, the employer would be required for the 3374
next calendar year to make payments under division (B) (2) of 3375
this section. 3376

(b) Based upon annualization of payments made or required 3377
to be made during the current calendar year, the employer would 3378
be required for the next calendar year to make payments under 3379
division (B) (2) of this section. 3380

(E) (1) An employer described in division (B) (1) or (2) of 3381
this section shall file, not later than the last day of the 3382
month following the end of each calendar quarter, a return 3383
covering, but not limited to, both the actual amount deducted 3384
and withheld and the amount required to be deducted and withheld 3385
for the tax imposed under section 5747.02 of the Revised Code 3386
during each partial weekly withholding period or portion of a 3387
partial weekly withholding period during that quarter. The 3388
employer shall file the quarterly return even if the aggregate 3389
amount required to be deducted and withheld for the quarter is 3390
zero dollars. At the time of filing the return, the employer 3391
shall pay any amounts of undeposited taxes for the quarter, 3392
whether actually deducted and withheld or required to be 3393
deducted and withheld, that have not been previously paid. If 3394
required under division (I) of this section, the payment shall 3395
be made by electronic funds transfer. The tax commissioner shall 3396
prescribe the form and other requirements of the quarterly 3397
return. 3398

(2) In addition to other returns required to be filed and 3399
payments required to be made under this section, every employer 3400
required to deduct and withhold taxes shall file, not later than 3401
the thirty-first day of January of each year, an annual return 3402
covering, but not limited to, both the aggregate amount deducted 3403

and withheld and the aggregate amount required to be deducted 3404
and withheld during the entire preceding year for the tax 3405
imposed under section 5747.02 of the Revised Code and for each 3406
tax imposed under Chapter 5748. of the Revised Code. At the time 3407
of filing that return, the employer shall pay over any amounts 3408
of undeposited taxes for the preceding year, whether actually 3409
deducted and withheld or required to be deducted and withheld, 3410
that have not been previously paid. The employer shall make the 3411
annual report, to each employee and to the tax commissioner, of 3412
the compensation paid and each tax withheld, as the commissioner 3413
by rule may prescribe. 3414

Each employer required to deduct and withhold any tax is 3415
liable for the payment of that amount required to be deducted 3416
and withheld, whether or not the tax has in fact been withheld, 3417
unless the failure to withhold was based upon the employer's 3418
good faith in reliance upon the statement of the employee as to 3419
liability, and the amount shall be deemed to be a special fund 3420
in trust for the general revenue fund. 3421

(F) Each employer shall file with the employer's annual 3422
return the following items of information on employees for whom 3423
withholding is required under section 5747.06 of the Revised 3424
Code: 3425

(1) The full name of each employee, the employee's 3426
address, the employee's school district of residence, and in the 3427
case of a nonresident employee, the employee's principal county 3428
of employment; 3429

(2) The social security number of each employee; 3430

(3) The total amount of compensation paid before any 3431
deductions to each employee for the period for which the annual 3432

return is made; 3433

(4) The amount of the tax imposed by section 5747.02 of 3434
the Revised Code and the amount of each tax imposed under 3435
Chapter 5748. of the Revised Code withheld from the compensation 3436
of the employee for the period for which the annual return is 3437
made. The commissioner may extend upon good cause the period for 3438
filing any notice or return required to be filed under this 3439
section and may adopt rules relating to extensions of time. If 3440
the extension results in an extension of time for the payment of 3441
the amounts withheld with respect to which the return is filed, 3442
the employer shall pay, at the time the amount withheld is paid, 3443
an amount of interest computed at the rate per annum prescribed 3444
by section 5703.47 of the Revised Code on that amount withheld, 3445
from the day that amount was originally required to be paid to 3446
the day of actual payment or to the day an assessment is issued 3447
under section 5747.13 of the Revised Code, whichever occurs 3448
first. 3449

(5) In addition to all other interest charges and 3450
penalties imposed, all amounts of taxes withheld or required to 3451
be withheld and remaining unpaid after the day the amounts are 3452
required to be paid shall bear interest from the date prescribed 3453
for payment at the rate per annum prescribed by section 5703.47 3454
of the Revised Code on the amount unpaid, in addition to the 3455
amount withheld, until paid or until the day an assessment is 3456
issued under section 5747.13 of the Revised Code, whichever 3457
occurs first. 3458

(G) An employee of a corporation, limited liability 3459
company, or business trust having control or supervision of or 3460
charged with the responsibility of filing the report and making 3461
payment, or an officer, member, manager, or trustee of a 3462

corporation, limited liability company, or business trust who is 3463
responsible for the execution of the corporation's, limited 3464
liability company's, or business trust's fiscal 3465
responsibilities, shall be personally liable for failure to file 3466
the report or pay the tax due as required by this section. The 3467
dissolution, termination, or bankruptcy of a corporation, 3468
limited liability company, or business trust does not discharge 3469
a responsible officer's, member's, manager's, employee's, or 3470
trustee's liability for a failure of the corporation, limited 3471
liability company, or business trust to file returns or pay tax 3472
due. 3473

(H) If an employer required to deduct and withhold income 3474
tax from compensation and to pay that tax to the state under 3475
sections 5747.06 and 5747.07 of the Revised Code sells the 3476
employer's business or stock of merchandise or quits the 3477
employer's business, the taxes required to be deducted and 3478
withheld and paid to the state pursuant to those sections prior 3479
to that time, together with any interest and penalties imposed 3480
on those taxes, become due and payable immediately, and that 3481
person shall make a final return within fifteen days after the 3482
date of selling or quitting business. The employer's successor 3483
shall withhold a sufficient amount of the purchase money to 3484
cover the amount of the taxes, interest, and penalties due and 3485
unpaid, until the former owner produces a receipt from the tax 3486
commissioner showing that the taxes, interest, and penalties 3487
have been paid or a certificate indicating that no such taxes 3488
are due. If the purchaser of the business or stock of 3489
merchandise fails to withhold purchase money, the purchaser 3490
shall be personally liable for the payment of the taxes, 3491
interest, and penalties accrued and unpaid during the operation 3492
of the business by the former owner. If the amount of taxes, 3493

interest, and penalties outstanding at the time of the purchase 3494
exceeds the total purchase money, the tax commissioner in the 3495
commissioner's discretion may adjust the liability of the seller 3496
or the responsibility of the purchaser to pay that liability to 3497
maximize the collection of withholding tax revenue. 3498

(I) An employer whose actual or required payments under 3499
this section exceeded eighty-four thousand dollars during the 3500
twelve-month period ending on the thirtieth day of June of the 3501
preceding calendar year shall make all payments required by this 3502
section for the year by electronic funds transfer under section 3503
5747.072 of the Revised Code. 3504

(J) (1) Every professional employer organization ~~and every,~~ 3505
professional employer organization reporting entity, and 3506
alternate employer organization shall file a report with the tax 3507
commissioner within thirty days after commencing business in 3508
this state that includes all of the following information: 3509

(a) The name, address, number the employer receives from 3510
the secretary of state to do business in this state, if 3511
applicable, and federal employer identification number of each 3512
client employer of the ~~professional employer organization or~~ 3513
~~professional employer organization reporting entity;~~ 3514

(b) The date that each client employer became a client of 3515
the ~~professional employer organization or professional employer-~~ 3516
~~organization reporting entity;~~ 3517

(c) The names and mailing addresses of the chief executive 3518
officer and the chief financial officer of each client employer 3519
for taxation of the client employer. 3520

(2) Beginning with the calendar quarter ending after a 3521
professional employer organization ~~or,~~ professional employer 3522

organization reporting entity, or alternate employer 3523
organization files the report required under division (J) (1) of 3524
this section, and every calendar quarter thereafter, the 3525
~~professional employer organization or the professional employer~~
~~organization reporting entity~~ shall file an updated report with 3526
the tax commissioner. The ~~professional employer organization or~~
~~professional employer organization reporting entity~~ shall file 3527
the updated report not later than the last day of the month 3528
following the end of the calendar quarter and shall include all 3529
of the following information in the report: 3530
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(a) If an entity became a client employer of the 3533
professional employer organization ~~or, professional employer~~
organization reporting entity, or alternate employer 3534
organization at any time during the calendar quarter, all of the 3535
information required under division (J) (1) of this section for 3536
each new client employer; 3537
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(b) If an entity terminated the professional employer 3539
organization agreement or the alternate employer organization
agreement between the entity and the professional employer
organization ~~or, professional employer organization reporting~~
~~entity and the entity, or alternate employer organization, as~~
applicable, at any time during the calendar quarter, the 3544
information described in division (J) (1) (a) of this section for 3545
that entity, the date during the calendar quarter that the 3546
entity ceased being a client of the ~~professional employer~~
organization or ~~professional employer organization reporting~~
entity, if applicable, or the date the entity ceased business 3548
operations in this state, if applicable; 3549
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(c) If the name or mailing address of the chief executive 3551
officer or the chief financial officer of a client employer has 3552

changed since the professional employer organization ~~or,~~ 3553
professional employer organization reporting entity, or 3554
alternate employer organization previously submitted a report 3555
under division (J) (1) or (2) of this section, the updated name 3556
or mailing address, or both, of the chief executive officer or 3557
the chief financial officer, as applicable; 3558

(d) If none of the events described in divisions (J) (2) (a) 3559
to (c) of this section occurred during the calendar quarter, a 3560
statement of that fact. 3561

Sec. 5751.01. As used in this chapter: 3562

(A) "Person" means, but is not limited to, individuals, 3563
combinations of individuals of any form, receivers, assignees, 3564
trustees in bankruptcy, firms, companies, joint-stock companies, 3565
business trusts, estates, partnerships, limited liability 3566
partnerships, limited liability companies, associations, joint 3567
ventures, clubs, societies, for-profit corporations, S 3568
corporations, qualified subchapter S subsidiaries, qualified 3569
subchapter S trusts, trusts, entities that are disregarded for 3570
federal income tax purposes, and any other entities. 3571

(B) "Consolidated elected taxpayer" means a group of two 3572
or more persons treated as a single taxpayer for purposes of 3573
this chapter as the result of an election made under section 3574
5751.011 of the Revised Code. 3575

(C) "Combined taxpayer" means a group of two or more 3576
persons treated as a single taxpayer for purposes of this 3577
chapter under section 5751.012 of the Revised Code. 3578

(D) "Taxpayer" means any person, or any group of persons 3579
in the case of a consolidated elected taxpayer or combined 3580
taxpayer treated as one taxpayer, required to register or pay 3581

tax under this chapter. "Taxpayer" does not include excluded persons. 3582
3583

(E) "Excluded person" means any of the following: 3584

(1) Any person with not more than one hundred fifty thousand dollars of taxable gross receipts during the calendar year. Division (E) (1) of this section does not apply to a person that is a member of a consolidated elected taxpayer; 3585
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(2) A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts: 3589
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(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code; 3595
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(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E) (2) (a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity; 3599
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(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural 3605
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gas company shall be determined in a manner consistent with 3611
division (D) of section 5727.03 of the Revised Code. 3612

As used in division (E)(2) of this section, "combined 3613
company" and "public utility" have the same meanings as in 3614
section 5727.01 of the Revised Code. 3615

(3) A financial institution, as defined in section 5726.01 3616
of the Revised Code, that paid the tax imposed by section 3617
5726.02 of the Revised Code based on one or more taxable years 3618
that include the entire tax period under this chapter; 3619

(4) A person directly or indirectly owned by one or more 3620
financial institutions, as defined in section 5726.01 of the 3621
Revised Code, that paid the tax imposed by section 5726.02 of 3622
the Revised Code based on one or more taxable years that include 3623
the entire tax period under this chapter. 3624

For the purposes of division (E)(4) of this section, a 3625
person owns another person under the following circumstances: 3626

(a) In the case of corporations issuing capital stock, one 3627
corporation owns another corporation if it owns fifty per cent 3628
or more of the other corporation's capital stock with current 3629
voting rights; 3630

(b) In the case of a limited liability company, one person 3631
owns the company if that person's membership interest, as 3632
defined in section 1705.01 of the Revised Code, is fifty per 3633
cent or more of the combined membership interests of all persons 3634
owning such interests in the company; 3635

(c) In the case of a partnership, trust, or other 3636
unincorporated business organization other than a limited 3637
liability company, one person owns the organization if, under 3638
the articles of organization or other instrument governing the 3639

affairs of the organization, that person has a beneficial 3640
interest in the organization's profits, surpluses, losses, or 3641
distributions of fifty per cent or more of the combined 3642
beneficial interests of all persons having such an interest in 3643
the organization. 3644

(5) A domestic insurance company or foreign insurance 3645
company, as defined in section 5725.01 of the Revised Code, that 3646
paid the insurance company premiums tax imposed by section 3647
5725.18 or Chapter 5729. of the Revised Code, or an unauthorized 3648
insurance company whose gross premiums are subject to tax under 3649
section 3905.36 of the Revised Code based on one or more 3650
measurement periods that include the entire tax period under 3651
this chapter; 3652

(6) A person that solely facilitates or services one or 3653
more securitizations of phase-in-recovery property pursuant to a 3654
final financing order as those terms are defined in section 3655
4928.23 of the Revised Code. For purposes of this division, 3656
"securitization" means transferring one or more assets to one or 3657
more persons and then issuing securities backed by the right to 3658
receive payment from the asset or assets so transferred. 3659

(7) Except as otherwise provided in this division, a pre- 3660
income tax trust as defined in section 5747.01 of the Revised 3661
Code and any pass-through entity of which such pre-income tax 3662
trust owns or controls, directly, indirectly, or constructively 3663
through related interests, more than five per cent of the 3664
ownership or equity interests. If the pre-income tax trust has 3665
made a qualifying pre-income tax trust election under division 3666
(EE) of section 5747.01 of the Revised Code, then the trust and 3667
the pass-through entities of which it owns or controls, 3668
directly, indirectly, or constructively through related 3669

interests, more than five per cent of the ownership or equity 3670
interests, shall not be excluded persons for purposes of the tax 3671
imposed under section 5751.02 of the Revised Code. 3672

(8) Nonprofit organizations or the state and its agencies, 3673
instrumentalities, or political subdivisions. 3674

(F) Except as otherwise provided in divisions (F) (2), (3), 3675
and (4) of this section, "gross receipts" means the total amount 3676
realized by a person, without deduction for the cost of goods 3677
sold or other expenses incurred, that contributes to the 3678
production of gross income of the person, including the fair 3679
market value of any property and any services received, and any 3680
debt transferred or forgiven as consideration. 3681

(1) The following are examples of gross receipts: 3682

(a) Amounts realized from the sale, exchange, or other 3683
disposition of the taxpayer's property to or with another; 3684

(b) Amounts realized from the taxpayer's performance of 3685
services for another; 3686

(c) Amounts realized from another's use or possession of 3687
the taxpayer's property or capital; 3688

(d) Any combination of the foregoing amounts. 3689

(2) "Gross receipts" excludes the following amounts: 3690

(a) Interest income except interest on credit sales; 3691

(b) Dividends and distributions from corporations, and 3692
distributive or proportionate shares of receipts and income from 3693
a pass-through entity as defined under section 5733.04 of the 3694
Revised Code; 3695

(c) Receipts from the sale, exchange, or other disposition 3696

of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F) (2) (c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F) (2) (c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.

(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;

(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;

(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee,

former employee, or the employee's legal successor for services 3727
rendered to or for an employer, including reimbursements 3728
received by or for an individual for medical or education 3729
expenses, health insurance premiums, or employee expenses, or on 3730
account of a dependent care spending account, legal services 3731
plan, any cafeteria plan described in section 125 of the 3732
Internal Revenue Code, or any similar employee reimbursement; 3733

(h) Proceeds received from the issuance of the taxpayer's 3734
own stock, options, warrants, puts, or calls, or from the sale 3735
of the taxpayer's treasury stock; 3736

(i) Proceeds received on the account of payments from 3737
insurance policies, except those proceeds received for the loss 3738
of business revenue; 3739

(j) Gifts or charitable contributions received; membership 3740
dues received by trade, professional, homeowners', or 3741
condominium associations; and payments received for educational 3742
courses, meetings, meals, or similar payments to a trade, 3743
professional, or other similar association; and fundraising 3744
receipts received by any person when any excess receipts are 3745
donated or used exclusively for charitable purposes; 3746

(k) Damages received as the result of litigation in excess 3747
of amounts that, if received without litigation, would be gross 3748
receipts; 3749

(l) Property, money, and other amounts received or 3750
acquired by an agent on behalf of another in excess of the 3751
agent's commission, fee, or other remuneration; 3752

(m) Tax refunds, other tax benefit recoveries, and 3753
reimbursements for the tax imposed under this chapter made by 3754
entities that are part of the same combined taxpayer or 3755

consolidated elected taxpayer group, and reimbursements made by 3756
entities that are not members of a combined taxpayer or 3757
consolidated elected taxpayer group that are required to be made 3758
for economic parity among multiple owners of an entity whose tax 3759
obligation under this chapter is required to be reported and 3760
paid entirely by one owner, pursuant to the requirements of 3761
sections 5751.011 and 5751.012 of the Revised Code; 3762

(n) Pension reversions; 3763

(o) Contributions to capital; 3764

(p) Sales or use taxes collected as a vendor or an out-of- 3765
state seller on behalf of the taxing jurisdiction from a 3766
consumer or other taxes the taxpayer is required by law to 3767
collect directly from a purchaser and remit to a local, state, 3768
or federal tax authority; 3769

(q) In the case of receipts from the sale of cigarettes, 3770
tobacco products, or vapor products by a wholesale dealer, 3771
retail dealer, distributor, manufacturer, vapor distributor, or 3772
seller, all as defined in section 5743.01 of the Revised Code, 3773
an amount equal to the federal and state excise taxes paid by 3774
any person on or for such cigarettes, tobacco products, or vapor 3775
products under subtitle E of the Internal Revenue Code or 3776
Chapter 5743. of the Revised Code; 3777

(r) In the case of receipts from the sale, transfer, 3778
exchange, or other disposition of motor fuel as "motor fuel" is 3779
defined in section 5736.01 of the Revised Code, an amount equal 3780
to the value of the motor fuel, including federal and state 3781
motor fuel excise taxes and receipts from billing or invoicing 3782
the tax imposed under section 5736.02 of the Revised Code to 3783
another person; 3784

(s) In the case of receipts from the sale of beer or 3785
intoxicating liquor, as defined in section 4301.01 of the 3786
Revised Code, by a person holding a permit issued under Chapter 3787
4301. or 4303. of the Revised Code, an amount equal to federal 3788
and state excise taxes paid by any person on or for such beer or 3789
intoxicating liquor under subtitle E of the Internal Revenue 3790
Code or Chapter 4301. or 4305. of the Revised Code; 3791

(t) Receipts realized by a new motor vehicle dealer or 3792
used motor vehicle dealer, as defined in section 4517.01 of the 3793
Revised Code, from the sale or other transfer of a motor 3794
vehicle, as defined in that section, to another motor vehicle 3795
dealer for the purpose of resale by the transferee motor vehicle 3796
dealer, but only if the sale or other transfer was based upon 3797
the transferee's need to meet a specific customer's preference 3798
for a motor vehicle; 3799

(u) Receipts from a financial institution described in 3800
division (E)(3) of this section for services provided to the 3801
financial institution in connection with the issuance, 3802
processing, servicing, and management of loans or credit 3803
accounts, if such financial institution and the recipient of 3804
such receipts have at least fifty per cent of their ownership 3805
interests owned or controlled, directly or constructively 3806
through related interests, by common owners; 3807

(v) Receipts realized from administering anti-neoplastic 3808
drugs and other cancer chemotherapy, biologicals, therapeutic 3809
agents, and supportive drugs in a physician's office to patients 3810
with cancer; 3811

(w) Funds received or used by a mortgage broker that is 3812
not a dealer in intangibles, other than fees or other 3813
consideration, pursuant to a table-funding mortgage loan or 3814

warehouse-lending mortgage loan. Terms used in division (F) (2) 3815
(w) of this section have the same meanings as in section 1322.01 3816
of the Revised Code, except "mortgage broker" means a person 3817
assisting a buyer in obtaining a mortgage loan for a fee or 3818
other consideration paid by the buyer or a lender, or a person 3819
engaged in table-funding or warehouse-lending mortgage loans 3820
that are first lien mortgage loans. 3821

(x) Property, money, and other amounts received by a 3822
professional employer organization, as defined in section 3823
4125.01 of the Revised Code, or an alternate employer 3824
organization, as defined in section 4133.01 of the Revised Code, 3825
from a client employer, as defined in ~~that section~~ either of 3826
those sections as applicable, in excess of the administrative 3827
fee charged by the professional employer organization or the 3828
alternate employer organization to the client employer; 3829

(y) In the case of amounts retained as commissions by a 3830
permit holder under Chapter 3769. of the Revised Code, an amount 3831
equal to the amounts specified under that chapter that must be 3832
paid to or collected by the tax commissioner as a tax and the 3833
amounts specified under that chapter to be used as purse money; 3834

(z) Qualifying distribution center receipts as determined 3835
under section 5751.40 of the Revised Code. 3836

(aa) Receipts of an employer from payroll deductions 3837
relating to the reimbursement of the employer for advancing 3838
moneys to an unrelated third party on an employee's behalf; 3839

(bb) Cash discounts allowed and taken; 3840

(cc) Returns and allowances; 3841

(dd) Bad debts from receipts on the basis of which the tax 3842
imposed by this chapter was paid in a prior quarterly tax 3843

payment period. For the purpose of this division, "bad debts" 3844
means any debts that have become worthless or uncollectible 3845
between the preceding and current quarterly tax payment periods, 3846
have been uncollected for at least six months, and that may be 3847
claimed as a deduction under section 166 of the Internal Revenue 3848
Code and the regulations adopted under that section, or that 3849
could be claimed as such if the taxpayer kept its accounts on 3850
the accrual basis. "Bad debts" does not include repossessed 3851
property, uncollectible amounts on property that remains in the 3852
possession of the taxpayer until the full purchase price is 3853
paid, or expenses in attempting to collect any account 3854
receivable or for any portion of the debt recovered; 3855

(ee) Any amount realized from the sale of an account 3856
receivable to the extent the receipts from the underlying 3857
transaction giving rise to the account receivable were included 3858
in the gross receipts of the taxpayer; 3859

(ff) Any receipts directly attributed to a transfer 3860
agreement or to the enterprise transferred under that agreement 3861
under section 4313.02 of the Revised Code. 3862

(gg) Qualified uranium receipts as determined under 3863
section 5751.41 of the Revised Code. 3864

(hh) In the case of amounts collected by a licensed casino 3865
operator from casino gaming, amounts in excess of the casino 3866
operator's gross casino revenue. In this division, "casino 3867
operator" and "casino gaming" have the meanings defined in 3868
section 3772.01 of the Revised Code, and "gross casino revenue" 3869
has the meaning defined in section 5753.01 of the Revised Code. 3870

(ii) Receipts realized from the sale of agricultural 3871
commodities by an agricultural commodity handler, both as 3872

defined in section 926.01 of the Revised Code, that is licensed 3873
by the director of agriculture to handle agricultural 3874
commodities in this state. 3875

(jj) Qualifying integrated supply chain receipts as 3876
determined under section 5751.42 of the Revised Code. 3877

(kk) In the case of a railroad company described in 3878
division (D) (9) of section 5727.01 of the Revised Code that 3879
purchases dyed diesel fuel directly from a supplier as defined 3880
by section 5736.01 of the Revised Code, an amount equal to the 3881
product of the number of gallons of dyed diesel fuel purchased 3882
directly from such a supplier multiplied by the average 3883
wholesale price for a gallon of diesel fuel as determined under 3884
section 5736.02 of the Revised Code for the period during which 3885
the fuel was purchased multiplied by a fraction, the numerator 3886
of which equals the rate of tax levied by section 5736.02 of the 3887
Revised Code less the rate of tax computed in section 5751.03 of 3888
the Revised Code, and the denominator of which equals the rate 3889
of tax computed in section 5751.03 of the Revised Code. 3890

(ll) Receipts realized by an out-of-state disaster 3891
business from disaster work conducted in this state during a 3892
disaster response period pursuant to a qualifying solicitation 3893
received by the business. Terms used in division (F) (2) (ll) of 3894
this section have the same meanings as in section 5703.94 of the 3895
Revised Code. 3896

(mm) Any receipts for which the tax imposed by this 3897
chapter is prohibited by the constitution or laws of the United 3898
States or the constitution of this state. 3899

(3) In the case of a taxpayer when acting as a real estate 3900
broker, "gross receipts" includes only the portion of any fee 3901

for the service of a real estate broker, or service of a real 3902
estate salesperson associated with that broker, that is retained 3903
by the broker and not paid to an associated real estate 3904
salesperson or another real estate broker. For the purposes of 3905
this division, "real estate broker" and "real estate 3906
salesperson" have the same meanings as in section 4735.01 of the 3907
Revised Code. 3908

(4) A taxpayer's method of accounting for gross receipts 3909
for a tax period shall be the same as the taxpayer's method of 3910
accounting for federal income tax purposes for the taxpayer's 3911
federal taxable year that includes the tax period. If a 3912
taxpayer's method of accounting for federal income tax purposes 3913
changes, its method of accounting for gross receipts under this 3914
chapter shall be changed accordingly. 3915

(G) "Taxable gross receipts" means gross receipts sitused 3916
to this state under section 5751.033 of the Revised Code. 3917

(H) A person has "substantial nexus with this state" if 3918
any of the following applies. The person: 3919

(1) Owns or uses a part or all of its capital in this 3920
state; 3921

(2) Holds a certificate of compliance with the laws of 3922
this state authorizing the person to do business in this state; 3923

(3) Has bright-line presence in this state; 3924

(4) Otherwise has nexus with this state to an extent that 3925
the person can be required to remit the tax imposed under this 3926
chapter under the Constitution of the United States. 3927

(I) A person has "bright-line presence" in this state for 3928
a reporting period and for the remaining portion of the calendar 3929

year if any of the following applies. The person: 3930

(1) Has at any time during the calendar year property in 3931
this state with an aggregate value of at least fifty thousand 3932
dollars. For the purpose of division (I)(1) of this section, 3933
owned property is valued at original cost and rented property is 3934
valued at eight times the net annual rental charge. 3935

(2) Has during the calendar year payroll in this state of 3936
at least fifty thousand dollars. Payroll in this state includes 3937
all of the following: 3938

(a) Any amount subject to withholding by the person under 3939
section 5747.06 of the Revised Code; 3940

(b) Any other amount the person pays as compensation to an 3941
individual under the supervision or control of the person for 3942
work done in this state; and 3943

(c) Any amount the person pays for services performed in 3944
this state on its behalf by another. 3945

(3) Has during the calendar year taxable gross receipts of 3946
at least five hundred thousand dollars. 3947

(4) Has at any time during the calendar year within this 3948
state at least twenty-five per cent of the person's total 3949
property, total payroll, or total gross receipts. 3950

(5) Is domiciled in this state as an individual or for 3951
corporate, commercial, or other business purposes. 3952

(J) "Tangible personal property" has the same meaning as 3953
in section 5739.01 of the Revised Code. 3954

(K) "Internal Revenue Code" means the Internal Revenue 3955
Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term 3956

used in this chapter that is not otherwise defined has the same 3957
meaning as when used in a comparable context in the laws of the 3958
United States relating to federal income taxes unless a 3959
different meaning is clearly required. Any reference in this 3960
chapter to the Internal Revenue Code includes other laws of the 3961
United States relating to federal income taxes. 3962

(L) "Calendar quarter" means a three-month period ending 3963
on the thirty-first day of March, the thirtieth day of June, the 3964
thirtieth day of September, or the thirty-first day of December. 3965

(M) "Tax period" means the calendar quarter or calendar 3966
year on the basis of which a taxpayer is required to pay the tax 3967
imposed under this chapter. 3968

(N) "Calendar year taxpayer" means a taxpayer for which 3969
the tax period is a calendar year. 3970

(O) "Calendar quarter taxpayer" means a taxpayer for which 3971
the tax period is a calendar quarter. 3972

(P) "Agent" means a person authorized by another person to 3973
act on its behalf to undertake a transaction for the other, 3974
including any of the following: 3975

(1) A person receiving a fee to sell financial 3976
instruments; 3977

(2) A person retaining only a commission from a 3978
transaction with the other proceeds from the transaction being 3979
remitted to another person; 3980

(3) A person issuing licenses and permits under section 3981
1533.13 of the Revised Code; 3982

(4) A lottery sales agent holding a valid license issued 3983
under section 3770.05 of the Revised Code; 3984

(5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code. 3985
3986

(Q) "Received" includes amounts accrued under the accrual method of accounting. 3987
3988

(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section 5751.04 of the Revised Code, a separate taxpayer that is not a member of such a group. 3989
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Section 2. That existing sections 4121.12, 4121.121, 4123.01, 4123.26, 4123.291, 4123.32, 4123.341, 4123.35, 4141.24, 4740.131, 5733.40, 5747.07, and 5751.01 of the Revised Code are hereby repealed. 3996
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Section 3. Section 4121.12 of the Revised Code is presented in this act as a composite of the section as amended by Sub. H.B. 123, Am. Sub. H.B. 153, and Sub. S.B. 171 of the 129th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act. 4000
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