

**As Reported by the Senate Financial Institutions, Insurance and
Technology Committee**

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Sub. S. B. No. 263

Senator Roegner

To amend section 4141.24 of the Revised Code to 1
make changes regarding the treatment of 2
professional employer organizations and 3
alternate employer organizations under the 4
Unemployment Compensation Law. 5

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

Section 1. That section 4141.24 of the Revised Code be 6
amended to read as follows: 7

Sec. 4141.24. (A) (1) The director of job and family 8
services shall maintain a separate account for each employer 9
and, except as otherwise provided in division (B) of section 10
4141.25 of the Revised Code respecting mutualized contributions, 11
shall credit such employer's account with all the contributions, 12
or payments in lieu of contributions, which the employer has 13
paid on the employer's own behalf. 14

(2) If, as of the computation date, a contributory 15
employer's account shows a negative balance computed as provided 16
in division (A) (3) of section 4141.25 of the Revised Code, less 17
any contributions due and unpaid on such date, which negative 18
balance is in excess of the limitations imposed by divisions (A) 19
(2) (a), (b), and (c) of this section and if the employer's 20

account is otherwise eligible for the transfer, then before the
employer's contribution rate is computed for the next succeeding
contribution period, an amount equal to the amount of the excess
eligible for transfer shall be permanently transferred from the
account of such employer and charged to the mutualized account
provided in division (B) of section 4141.25 of the Revised Code.

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

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

shall be permanently transferred from the account as provided in 52
this division. 53

(c) If at the next computation date subsequent to the 54
computation date at which a transfer from a contributory 55
employer's account occurs pursuant to division (A) (2) (b) of this 56
section, the employer's account shows a negative balance in 57
excess of twenty per cent of the employer's average annual 58
payroll, then before the employer's contribution rate is 59
computed for the next succeeding contribution period, an amount 60
equal to the amount of the excess shall be permanently 61
transferred from the account as provided in this division. 62

(d) If no transfer occurs pursuant to division (A) (2) (b) 63
or (c) of this section, the employer's account is ineligible for 64
any additional transfers under division (A) (2) of this section 65
until the account requalifies for a transfer pursuant to 66
division (A) (2) (a) of this section. 67

(B) Any employer may make voluntary payments in addition 68
to the contributions required under this chapter, in accordance 69
with rules established by the director. Such payments shall be 70
included in the employer's account as of the computation date, 71
provided they are received by the director by the thirty-first 72
day of December following such computation date. Such voluntary 73
payment, when accepted from an employer, will not be refunded in 74
whole or in part. In determining whether an employer's account 75
has a positive balance on two consecutive computation dates and 76
is eligible for transfers under division (A) (2) of this section, 77
the director shall exclude any voluntary payments made 78
subsequent to the last transfer made under division (A) (2) of 79
this section. 80

(C) All contributions to the fund shall be pooled and 81

available to pay benefits to any individual entitled to benefits 82
irrespective of the source of such contributions. 83

(D) (1) For the purposes of this section and sections 84
4141.241 and 4141.242 of the Revised Code, an employer's account 85
shall be charged only for benefits based on remuneration paid by 86
such employer. Benefits paid to an eligible individual shall be 87
charged against the account of each employer within the 88
claimant's base period in the proportion to which wages 89
attributable to each employer of the claimant bears to the 90
claimant's total base period wages. Charges to the account of a 91
base period employer with whom the claimant is employed part- 92
time at the time the claimant's application for a determination 93
of benefits rights is filed shall be charged to the mutualized 94
account when all of the following conditions are met: 95

(a) The claimant also worked part-time for the employer 96
during the base period of the claim. 97

(b) The claimant is unemployed due to loss of other 98
employment. 99

(c) The employer is not a reimbursing employer under 100
section 4141.241 or 4141.242 of the Revised Code. 101

(2) Notwithstanding division (D) (1) of this section, 102
charges to the account of any employer, including any 103
reimbursing employer, shall be charged to the mutualized account 104
if it finally is determined by a court on appeal that the 105
employer's account is not chargeable for the benefits. 106

(3) (a) Any benefits paid to a claimant under section 107
4141.28 of the Revised Code prior to a final determination of 108
the claimant's right to the benefits shall be charged to the 109
employer's account as provided in division (D) (1) of this 110

section, provided that if there is no final determination of the 111
claim by the subsequent thirtieth day of June, the employer's 112
account shall be credited with the total amount of benefits that 113
has been paid prior to that date, based on the determination 114
that has not become final. The total amount credited to the 115
employer's account shall be charged to a suspense account, which 116
shall be maintained as a separate bookkeeping account and 117
administered as a part of this section, and shall not be used in 118
determining the account balance of the employer for the purpose 119
of computing the employer's contribution rate under section 120
4141.25 of the Revised Code. 121

(b) If it is finally determined that the claimant is 122
entitled to all or a part of the benefits in dispute, the 123
suspense account shall be credited and the appropriate 124
employer's account charged with the benefits. If it is finally 125
determined that the claimant is not entitled to all or any 126
portion of the benefits in dispute, the benefits shall be 127
credited to the suspense account and, except as provided in 128
division (D) (3) (d) of this section, a corresponding charge made 129
to the mutualized account established in division (B) of section 130
4141.25 of the Revised Code, provided that, except as otherwise 131
provided in this section, if benefits are chargeable to an 132
employer or group of employers who is required or elects to make 133
payments to the fund in lieu of contributions under section 134
4141.241 of the Revised Code, the benefits shall be charged to 135
the employer's account in the manner provided in division (D) (1) 136
of this section and division (B) of section 4141.241 of the 137
Revised Code, and no part of the benefits may be charged to the 138
suspense account provided in this division. 139

(c) Except as provided in division (D) (3) (d) of this 140
section, to the extent that benefits that have been paid to a 141

claimant and charged to the employer's account are found not to 142
be due the claimant and are recovered by the director as 143
provided in section 4141.35 of the Revised Code, they shall be 144
credited to the employer's account. 145

(d) (i) An employer's account shall not be credited for 146
amounts recovered by the director pursuant to division (D) (3) (c) 147
of this section, and the mutualized account established in 148
division (B) of section 4141.25 of the Revised Code shall not be 149
charged pursuant to division (D) (3) (b) of this section, for 150
benefits that have been paid to a claimant and are subsequently 151
found not to be due to the claimant, if it is determined by the 152
director, on or after October 21, 2013, that both of the 153
following have occurred: 154

(I) The benefits were paid because the claimant's 155
employer, or any employee, officer, or agent of that employer, 156
failed to respond timely or adequately to a request for 157
information regarding a determination of benefit rights or 158
claims for benefits under section 4141.28 of the Revised Code. 159

(II) The claimant's employer, or any employee, officer, or 160
agent of that employer, on behalf of the employer, previously 161
established a pattern of failing to respond timely or adequately 162
within the same calendar year period pursuant to division (D) (3) 163
(d) (ii) (III) of this section. 164

(ii) For purposes of division (D) (3) (d) of this section: 165

(I) A response is considered "timely" if the response is 166
received by the director within the time provided under section 167
4141.28 of the Revised Code. 168

(II) A response is considered "adequate" if the employer 169
or employee, officer, or agent of that employer provided answers 170

to all questions raised by the director pursuant to section 171
4141.28 of the Revised Code or participated in a fact-finding 172
interview if requested by the director. 173

(III) A "pattern of failing" is established after the 174
third instance of benefits being paid because the claimant's 175
employer, or any employee, officer, or agent of that employer, 176
on behalf of the employer, failed to respond timely or 177
adequately to a request for information regarding a 178
determination of benefit rights or claims for benefits under 179
section 4141.28 of the Revised Code within a calendar year 180
period. 181

(e) If the mutualized account established in division (B) 182
of section 4141.25 of the Revised Code is not charged for 183
benefits credited to a suspense account pursuant to division (D) 184
(3) (d) of this section, a corresponding charge shall be made to 185
the account of the employer whose failure to timely or 186
adequately respond to a request for information caused the 187
erroneous payment. 188

(f) The appeal provisions of sections 4141.281 and 189
4141.282 of the Revised Code shall apply to all determinations 190
issued under division (D) (3) (d) of this section. 191

(4) The director shall notify each employer at least once 192
each month of the benefits charged to the employer's account 193
since the last preceding notice; except that for the purposes of 194
sections 4141.241 and 4141.242 of the Revised Code which 195
provides the billing of employers on a payment in lieu of a 196
contribution basis, the director may prescribe a quarterly or 197
less frequent notice of benefits charged to the employer's 198
account. Such notice will show a summary of the amount of 199
benefits paid which were charged to the employer's account. This 200

notice shall not be deemed a determination of the claimant's 201
eligibility for benefits. Any employer so notified, however, may 202
file within fifteen days after the mailing date of the notice, 203
an exception to charges appearing on the notice on the grounds 204
that such charges are not in accordance with this section. The 205
director shall promptly examine the exception to such charges 206
and shall notify the employer of the director's decision 207
thereon, which decision shall become final unless appealed to 208
the unemployment compensation review commission in the manner 209
provided in section 4141.26 of the Revised Code. For the 210
purposes of this division, an exception is considered timely 211
filed when it has been received as provided in division (D) (1) 212
of section 4141.281 of the Revised Code. 213

(E) The director shall terminate and close the account of 214
any contributory employer who has been subject to this chapter 215
if the enterprise for which the account was established is no 216
longer in operation and it has had no payroll and its account 217
has not been chargeable with benefits for a period of five 218
consecutive years. The amount of any positive balance, computed 219
as provided in division (A) (3) of section 4141.25 of the Revised 220
Code, in an account closed and terminated as provided in this 221
section shall be credited to the mutualized account as provided 222
in division (B) (2) (b) of section 4141.25 of the Revised Code. 223
The amount of any negative balance, computed as provided in 224
division (A) (3) of section 4141.25 of the Revised Code, in an 225
account closed and terminated as provided in this section shall 226
be charged to the mutualized account as provided in division (B) 227
(1) (b) of section 4141.25 of the Revised Code. The amount of any 228
positive balance or negative balance, credited or charged to the 229
mutualized account after the termination and closing of an 230
employer's account, shall not thereafter be considered in 231

determining the contribution rate of such employer. The closing 232
of an employer's account as provided in this division shall not 233
relieve such employer from liability for any unpaid 234
contributions or payment in lieu of contributions which are due 235
for periods prior to such closing. 236

If the director finds that a contributory employer's 237
business is closed solely because of the entrance of one or more 238
of the owners, officers, or partners, or the majority 239
stockholder, into the armed forces of the United States, or any 240
of its allies, or of the United Nations after July 1, 1950, such 241
employer's account shall not be terminated and if the business 242
is resumed within two years after the discharge or release of 243
such persons from active duty in the armed forces, the 244
employer's experience shall be deemed to have been continuous 245
throughout such period. The reserve ratio of any such employer 246
shall be the total contributions paid by such employer minus all 247
benefits, including benefits paid to any individual during the 248
period such employer was in the armed forces, based upon wages 249
paid by the employer prior to the employer's entrance into the 250
armed forces divided by the average of the employer's annual 251
payrolls for the three most recent years during the whole of 252
which the employer has been in business. 253

(F) If an employer transfers all of its trade or business 254
to another employer or person, the acquiring employer or person 255
shall be the successor in interest to the transferring employer 256
and shall assume the resources and liabilities of such 257
transferring employer's account, and continue the payment of all 258
contributions, or payments in lieu of contributions, due under 259
this chapter. 260

If an employer or person acquires substantially all, or a 261

clearly segregable and identifiable portion of an employer's 262
trade or business, then upon the director's approval of a 263
properly completed application for successorship, the employer 264
or person acquiring the trade or business, or portion thereof, 265
shall be the successor in interest. The director by rule may 266
prescribe procedures for effecting transfers of experience as 267
provided for in this section. 268

(G) Notwithstanding sections 4141.09, 4141.23, 4141.24, 269
4141.241, 4141.242, 4141.25, 4141.26, and 4141.27 of the Revised 270
Code, both of the following apply regarding assignment of rates 271
and transfers of experience: 272

(1) If an employer transfers its trade or business, or a 273
portion thereof, to another employer and, at the time of the 274
transfer, both employers are under substantially common 275
ownership, management, or control, then the unemployment 276
experience attributable to the transferred trade or business, or 277
portion thereof, shall be transferred to the employer to whom 278
the business is so transferred. The director shall recalculate 279
the rates of both employers and those rates shall be effective 280
immediately upon the date of the transfer of the trade or 281
business. 282

(2) Whenever a person is not an employer under this 283
chapter at the time the person acquires the trade or business of 284
an employer, the unemployment experience of the acquired trade 285
or business shall not be transferred to the person if the 286
director finds that the person acquired the trade or business 287
solely or primarily for the purpose of obtaining a lower rate of 288
contributions. Instead, that person shall be assigned the 289
applicable new employer rate under division (A) (1) of section 290
4141.25 of the Revised Code. 291

(H) The director shall establish procedures to identify 292
the transfer or acquisition of a trade or business for purposes 293
of this section and shall adopt rules prescribing procedures for 294
effecting transfers of experience as described in this section. 295

(I) No rate of contribution less than two and seven-tenths 296
per cent shall be permitted a contributory employer succeeding 297
to the experience of another contributory employer pursuant to 298
this section for any period subsequent to such succession, 299
except in accordance with rules prescribed by the director, 300
which rules shall be consistent with federal requirements for 301
additional credit allowance in section 3303 of the "Internal 302
Revenue Code of 1954" and consistent with this chapter, except 303
that such rules may establish a computation date for any such 304
period different from the computation date generally prescribed 305
by this chapter, and may define "calendar year" as meaning a 306
twelve-consecutive-month period ending on the same day of the 307
year as that on which such computation date occurs. 308

(J) The director may prescribe rules for the 309
establishment, maintenance, and dissolution of common 310
contribution rates for two or more contributory employers, and 311
in accordance with such rules and upon application by two or 312
more employers shall establish such common rate to be computed 313
by merging the several contribution rate factors of such 314
employers for the purpose of establishing a common contribution 315
rate applicable to all such employers. 316

(K) The director shall adopt rules applicable to 317
professional employer organizations and professional employer 318
organization reporting entities to address the method in which a 319
professional employer organization or professional employer 320
organization reporting entity reports quarterly wages and 321

contributions to the director for shared employees. 322

(1) The rules shall ~~recognize~~ do both of the following: 323

(a) Recognize a professional employer organization or 324
professional employer organization reporting entity as the 325
employer of record of the shared employees of the professional 326
employer organization or professional employer organization 327
reporting entity for reporting purposes; ~~however, the~~ 328

~~rules shall~~ (b) Except as provided in division (K) (5) of 329
this section, require that each shared employee of a single 330
client employer be reported under a separate and unique 331
subaccount of the professional employer organization or 332
professional employer organization reporting entity to reflect 333
the experience of the shared employees of that client employer. 334

(2) The director shall use a subaccount solely to 335
determine experience rates for that individual subaccount on an 336
annual basis and shall recognize a professional employer 337
organization or professional employer organization reporting 338
entity as the employer of record associated with each 339
subaccount. The director ~~shall~~ may combine the rate experience 340
that existed on a client employer's account prior to entering 341
into a professional employer organization agreement with the 342
experience ~~accumulated as a subaccount of~~ attributable to the 343
client employer while subject to the agreement with the 344
professional employer organization or professional employer 345
organization reporting entity. The combined experience ~~shall~~ may 346
remain with the client employer's account upon termination of 347
the professional employer organization agreement. 348

(3) A professional employer organization or professional 349
employer organization reporting entity shall provide a power of 350

attorney or other evidence, which evidence may be included as 351
part of a professional employer organization agreement, 352
completed by each client employer of the professional employer 353
organization or professional employer organization reporting 354
entity, authorizing the professional employer organization or 355
professional employer organization reporting entity to act on 356
behalf of the client employer in accordance with the 357
requirements of this chapter. 358

(4) Any rule adopted pursuant to division (K) of this 359
section also shall include administrative requirements that 360
permit a professional employer organization or a professional 361
employer organization reporting entity to transmit any reporting 362
and payment data required under division ~~(K) (1)~~ (K) (1) (b) of this 363
section collectively as a single filing with the director. 364

~~(5)~~ (5) (a) A professional employer organization or 365
professional employer organization reporting entity may elect to 366
report shared employees of a client employer under the account 367
and experience rate of the professional employer organization or 368
professional employer organization reporting entity by giving 369
notice to the director. 370

(b) If a professional employer organization or 371
professional employer organization reporting entity has made an 372
election under division (K) (5) (a) of this section and the 373
election has been in effect for two or more calendar years, the 374
professional employer organization or professional employer 375
organization reporting entity may change the election by 376
notifying the director. 377

(c) If a professional employer organization or 378
professional employer organization reporting entity makes or 379
changes an election under division (K) (5) (a) or (b) of this 380

section, the director shall recalculate the experience rate of 381
the professional employer organization or professional employer 382
organization reporting entity to reflect the experience 383
attributable to the shared employees of a client employer under 384
the election. The recalculated rate shall be effective beginning 385
in the calendar year following the date the director receives 386
notice of the election. 387

(6) As used in division (K) of this section, "client 388
employer," "professional employer organization," "professional 389
employer organization agreement," "professional employer 390
organization reporting entity," and "shared employee" have the 391
same meanings as in section 4125.01 of the Revised Code. 392

(L) The director shall adopt rules applicable to alternate 393
employer organizations as defined in section 4133.01 of the 394
Revised Code that are consistent with the requirements of and 395
rules adopted under division (K) of this section. 396

Section 2. That existing section 4141.24 of the Revised 397
Code is hereby repealed. 398

Section 3. (A) As used in this section: 399

(1) "Professional employer organization," "professional 400
employer organization reporting entity," and "shared employee" 401
have the same meanings as in section 4125.01 of the Revised 402
Code. 403

(2) "Alternate employer organization" and "worksite 404
employee" have the same meanings as in section 4133.01 of the 405
Revised Code. 406

(B) A professional employer organization, professional 407
employer organization reporting entity, or alternate employer 408
organization may elect to report quarterly wages and 409

contributions for shared or worksite employees using the 410
organization's or entity's account and experience rate under 411
division (K) (5) of section 4141.24 of the Revised Code, as 412
amended by this act, by giving notice to the Director of Job and 413
Family Services. To be valid, the notice must be received by the 414
Director not later than sixty days after the effective date of 415
this section. 416

(C) If a professional employer organization, professional 417
employer organization reporting entity, or alternate employer 418
organization makes an election under division (B) of this 419
section, the Director shall recalculate the experience rate of 420
the professional employer organization, professional employer 421
organization reporting entity, or alternate employer 422
organization to reflect the experience attributable to the 423
shared or worksite employees of a client employer under the 424
election. The recalculated rate shall be effective immediately 425
upon the date the Director receives notice of the election. 426