As Reported by the House Public Insurance and Pensions Committee

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Senator Roegner

Cosponsors: Senators Blackshear, Cirino, DeMora, Gavarone, Hicks-Hudson, Ingram, Lang, Patton, Reineke, Reynolds, Romanchuk, Schaffer, Timken, Weinstein, Wilson

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

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

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

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

(2) If, as of the computation date, a contributory employer's account shows a negative balance computed as provided in division (A)(3) of section 4141.25 of the Revised Code, less any contributions due and unpaid on such date, which negative

balance is in excess of the limitations imposed by divisions (A)(2)(a), (b), and (c) of this section and if the employer's 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 this division.

(c) If at the next computation date subsequent to the computation date at which a transfer from a contributory employer's account occurs pursuant to division (A)(2)(b) of this section, the employer's account shows a negative balance in excess of twenty 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 this division.

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

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

this section.

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

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

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

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

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

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

(3)(a) Any benefits paid to a claimant under section 4141.28 of the Revised Code prior to a final determination of

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

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

(c) Except as provided in division (D)(3)(d) of this section, to the extent that benefits that have been paid to a claimant and charged to the employer's account are found not to be due the claimant and are recovered by the director as provided in section 4141.35 of the Revised Code, they shall be credited to the employer's account.

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

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

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

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

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

(II) A response is considered "adequate" if the employer or employee, officer, or agent of that employer provided answers to all questions raised by the director pursuant to section 4141.28 of the Revised Code or participated in a fact-finding interview if requested by the director.

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

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

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

(4) The director shall notify each employer at least once each month of the benefits charged to the employer's account since the last preceding notice; except that for the purposes of sections 4141.241 and 4141.242 of the Revised Code which provides the billing of employers on a payment in lieu of a contribution basis, the director may prescribe a quarterly or less frequent notice of benefits charged to the employer's

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

(E) The director shall terminate and close the account of any contributory employer who has been subject to this chapter if the enterprise for which the account was established is no longer in operation and it has had no payroll and its account has not been chargeable with benefits for a period of five consecutive years. The amount of any positive balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be credited to the mutualized account as provided in division (B)(2)(b) of section 4141.25 of the Revised Code. The amount of any negative balance, computed as provided in division (A)(3) of section 4141.25 of the Revised Code, in an account closed and terminated as provided in this section shall be charged to the mutualized account as provided in division (B)(1)(b) of section 4141.25 of the Revised Code. The amount of any positive balance or negative balance, credited or charged to the

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

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

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

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.

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

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

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

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

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

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

(a) Recognize a professional employer organization or professional employer organization reporting entity as the employer of record of the shared employees of the professional employer organization or professional employer organization reporting entity for reporting purposes; ~~however, the rules shall~~ (b) Except as provided in division (K)(5) of this section, require that each shared employee of a single client employer be reported under a separate and unique subaccount of the professional employer organization or professional employer organization reporting entity to reflect the experience of the shared employees of that client employer.

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

(3) A professional employer organization or professional

employer organization reporting entity shall provide a power of attorney or other evidence, which evidence may be included as part of a professional employer organization agreement, completed by each client employer of the professional employer organization or professional employer organization reporting entity, authorizing the professional employer organization or professional employer organization reporting entity to act on behalf of the client employer in accordance with the requirements of this chapter.

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

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

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

(c) If a professional employer organization or professional employer organization reporting entity makes or

changes an election under division (K)(5)(a) or (b) of this section, the director shall recalculate the experience rate of the professional employer organization or professional employer organization reporting entity to reflect the experience attributable to the shared employees of a client employer under the election. The recalculated rate shall be effective beginning in the calendar year following the date the director receives notice of the election.

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

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

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

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

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

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

(B) A professional employer organization, professional employer organization reporting entity, or alternate employer

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

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