

**As Passed by the House**

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**Sub. S. B. No. 263**

**Senator Roegner**

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

**Representatives Brennan, Brewer, Claggett, Click, Cockley, Daniels, Holmes, Mathews, A., Peterson, Russo, Sigrist, Tims, White, E., Williams, Young**

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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 21  
employer's contribution rate is computed for the next succeeding 22  
contribution period, an amount equal to the amount of the excess 23  
eligible for transfer shall be permanently transferred from the 24  
account of such employer and charged to the mutualized account 25  
provided in division (B) of section 4141.25 of the Revised Code. 26

(a) If as of any computation date, a contributory 27  
employer's account shows a negative balance in excess of ten per 28  
cent of the employer's average annual payroll, then before the 29  
employer's contribution rate is computed for the next succeeding 30  
contribution period, an amount equal to the amount of the excess 31  
shall be transferred from the account as provided in this 32  
division. No contributory employer's account may have any excess 33  
transferred pursuant to division (A) (2) (a) of this section, 34  
unless the employer's account has shown a positive balance for 35  
at least two consecutive computation dates prior to the 36  
computation date with respect to which the transfer is proposed. 37  
Each time a transfer is made pursuant to division (A) (2) (a) of 38  
this section, the employer's account is ineligible for any 39  
additional transfers under that division, until the account 40  
shows a positive balance for at least two consecutive 41  
computation dates subsequent to the computation date of which 42  
the most recent transfer occurs pursuant to division (A) (2) (a), 43  
(b), or (c) of this section. 44

(b) If at the next computation date after the computation 45  
date at which a transfer from the account occurs pursuant to 46  
division (A) (2) (a) of this section, a contributory employer's 47

account shows a negative balance in excess of fifteen per cent 48  
of the employer's average annual payroll, then before the 49  
employer's contribution rate is computed for the next succeeding 50  
contribution period an amount equal to the amount of the excess 51  
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 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 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