

# AN ACT

To amend 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 and to enact sections 4133.01, 4133.02, 4133.03, 4133.04, 4133.05, 4133.06, 4133.07, 4133.08, 4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 4133.14, and 4133.99 of the Revised Code to create alternate employer organizations.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That 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 be amended and sections 4133.01, 4133.02, 4133.03, 4133.04, 4133.05, 4133.06, 4133.07, 4133.08, 4133.09, 4133.10, 4133.11, 4133.12, 4133.13, 4133.14, and 4133.99 of the Revised Code be enacted to read as follows:

Sec. 4121.12. (A) There is hereby created the bureau of workers' compensation board of directors consisting of eleven members to be appointed by the governor with the advice and consent of the senate. One member shall be an individual who, on account of the individual's previous vocation, employment, or affiliations, can be classed as a representative of employees; two members shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employee organizations and at least one of these two individuals shall be a member of the executive committee of the largest statewide labor federation; three members shall be individuals who, on account of their previous vocation, employment, or affiliations, can be classed as representatives of employers, one of whom represents self-insuring employers, one of whom is a state fund employer who employs one hundred or more employees, and one of whom is a state fund employer who employs less than one hundred employees; two members shall be individuals who, on account of their vocation, employment, or affiliations, can be classed as investment and securities experts who have direct experience in the management, analysis, supervision, or investment of assets and are residents of this state; one member who shall be a certified public accountant; one member who shall be an actuary who is a member in good standing with the American academy of actuaries or who is an associate or fellow with the casualty actuarial society; and one member shall represent the public and also be an individual who, on account of the individual's previous vocation, employment, or affiliations, cannot be classed as either predominantly representative of employees or of employers. The governor shall select the chairperson of the board who shall serve as chairperson at the pleasure of the governor.

None of the members of the board, within one year immediately preceding the member's appointment, shall have been employed by the bureau of workers' compensation or by any person, partnership, or corporation that has provided to the bureau services of a financial or investment nature, including the management, analysis, supervision, or investment of assets.

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

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

(C) In making appointments to the board, the governor shall select the members from the list of names submitted by the workers' compensation board of directors nominating committee pursuant to this division. The nominating committee shall submit to the governor a list containing four separate names for each of the members on the board. Within fourteen days after the submission of the list, the governor shall appoint individuals from the list.

At least thirty days prior to a vacancy occurring as a result of the expiration of a term and within thirty days after other vacancies occurring on the board, the nominating committee shall submit an initial list containing four names for each vacancy. Within fourteen days after the submission of the initial list, the governor either shall appoint individuals from that list or request the nominating committee to submit another list of four names for each member the governor has not appointed from the initial list, which list the nominating committee shall submit to the governor within fourteen days after the governor's request. The governor then shall appoint, within seven days after the submission of the second list, one of the individuals from either list to fill the vacancy for which the governor has not made an appointment from the initial list. If the governor appoints an individual to fill a vacancy occurring as a result of the expiration of a term, the individual appointed shall begin serving as a member of the board when the term for which the individual's predecessor was appointed expires or immediately upon appointment by the governor, whichever occurs later. With respect to the filling of vacancies, the nominating committee shall provide the governor with a list of four individuals who are, in the judgment of the nominating committee, the most fully qualified to accede to membership on the board.

In order for the name of an individual to be submitted to the governor under this division, the nominating committee shall approve the individual by an affirmative vote of a majority of its members.

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

following basis:

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

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

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

(4) A member may receive no more than thirty thousand dollars per year to compensate the member for attending meetings of any of the committees specified in division (D)(3) of this section, regardless of the number of meetings held by a committee during a year or the number of committees on which a member serves.

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

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

(F) The board shall:

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

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

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

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

(b) A statement of the net assets available for the provision of compensation and benefits under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code as of the last day of the fiscal year;

(c) A statement of any changes that occurred in the net assets available, including employer premiums and net investment income, for the provision of compensation and benefits and payment of administrative expenses, between the first and last day of the fiscal year immediately preceding the date of the report;

(d) The following information for each of the six consecutive fiscal years occurring previous

to the report:

- (i) A schedule of the net assets available for compensation and benefits;
  - (ii) The annual cost of the payment of compensation and benefits;
  - (iii) Annual administrative expenses incurred;
  - (iv) Annual employer premiums allocated for the provision of compensation and benefits.
  - (e) A description of any significant changes that occurred during the six years for which the board provided the information required under division (F)(3)(d) of this section that affect the ability of the board to compare that information from year to year.
- (4) Review all independent financial audits of the bureau. The administrator shall provide access to records of the bureau to facilitate the review required under this division.
  - (5) Study issues as requested by the administrator or the governor;
  - (6) Contract with all of the following:
    - (a) An independent actuarial firm to assist the board in making recommendations to the administrator regarding premium rates;
    - (b) An outside investment counsel to assist the workers' compensation investment committee in fulfilling its duties;
    - (c) An independent fiduciary counsel to assist the board in the performance of its duties.
  - (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;
  - (8) Review and publish the investment policy no less than annually and make copies available to interested parties;
  - (9) Prohibit, on a prospective basis, any specific investment it finds to be contrary to the investment policy approved by the board;
  - (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;
  - (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;
  - (12) Submit a report annually on the performance and value of each investment class to the governor, the president and minority leader of the senate, and the speaker and minority leader of the house of representatives;
  - (13) Advise and consent on all of the following:
    - (a) Administrative rules the administrator submits to it pursuant to division (B)(5) of section 4121.121 of the Revised Code for the classification of occupations or industries, for premium rates and contributions, for the amount to be credited to the surplus fund, for rules and systems of rating, rate revisions, and merit rating;
    - (b) The duties and authority conferred upon the administrator pursuant to section 4121.37 of the Revised Code;
    - (c) Rules the administrator adopts for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code;

(d) Rules the administrator submits to it pursuant to Chapter 4167. of the Revised Code regarding the public employment risk reduction program and the protection of public health care workers from exposure incidents.

As used in this division, "public health care worker" and "exposure incident" have the same meanings as in section 4167.25 of the Revised Code.

(14) Perform all duties required under this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code;

(15) Meet with the governor on an annual basis to discuss the administrator's performance of the duties specified in this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code;

(16) Develop and participate in a bureau of workers' compensation board of directors education program that consists of all of the following:

(a) An orientation component for newly appointed members;

(b) A continuing education component for board members who have served for at least one year;

(c) A curriculum that includes education about each of the following topics:

(i) Board member duties and responsibilities;

(ii) Compensation and benefits paid pursuant to this chapter and Chapters 4123., 4127., and 4131. of the Revised Code;

(iii) Ethics;

(iv) Governance processes and procedures;

(v) Actuarial soundness;

(vi) Investments;

(vii) Any other subject matter the board believes is reasonably related to the duties of a board member.

(17) Hold all sessions, classes, and other events for the program developed pursuant to division (F)(16) of this section in this state.

(G) The board may do both of the following:

(1) Vote to close any investment class;

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

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

(I) For the purposes of division (G)(1) of section 121.22 of the Revised Code, the meeting between the governor and the board to review the administrator's performance as required under

division (F)(15) of this section shall be considered a meeting regarding the employment of the administrator.

Sec. 4121.121. (A) There is hereby created the bureau of workers' compensation, which shall be administered by the administrator of workers' compensation. A person appointed to the position of administrator shall possess significant management experience in effectively managing an organization or organizations of substantial size and complexity. A person appointed to the position of administrator also shall possess a minimum of five years of experience in the field of workers' compensation insurance or in another insurance industry, except as otherwise provided when the conditions specified in division (C) of this section are satisfied. The governor shall appoint the administrator as provided in section 121.03 of the Revised Code, and the administrator shall serve at the pleasure of the governor. The governor shall fix the administrator's salary on the basis of the administrator's experience and the administrator's responsibilities and duties under this chapter and Chapters 4123., 4125., 4127., 4131., 4133., and 4167. of the Revised Code. The governor shall not appoint to the position of administrator any person who has, or whose spouse has, given a contribution to the campaign committee of the governor in an amount greater than one thousand dollars during the two-year period immediately preceding the date of the appointment of the administrator.

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

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

(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, and take whatever steps are necessary to provide adequate compensation for other staff attorneys.

The administrator may appoint a person who holds a certified position in the classified service within the bureau to a position in the unclassified service within the bureau. A person appointed pursuant to this division to a position in the unclassified service shall retain the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment in the unclassified service, regardless of the number of positions the person held in the unclassified service. An employee's right to resume a position in the classified service may only be exercised when the administrator demotes the employee to a pay range lower than the employee's current pay range or revokes the employee's appointment to the unclassified service. An employee who holds a position in the classified service and who is appointed to a position in the unclassified service on or after January 1, 2016, shall have the right to resume a position in the classified service under this division only within five years after the effective date of the employee's appointment in the unclassified service. An employee forfeits the right to resume a position in the classified service when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of this chapter or Chapter 124., 4123., 4125., 4127., 4131., 4133., or 4167. of the Revised Code, violation of the rules of the director of administrative services or the administrator, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony while employed in the civil service. An employee also forfeits the right to resume a position in the classified service upon transfer to a different agency.

Reinstatement to a position in the classified service shall be to a position substantially equal to that position in the classified service held previously, as certified by the department of administrative services. If the position the person previously held in the classified service has been placed in the unclassified service or is otherwise unavailable, the person shall be appointed to a position in the classified service within the bureau that the director of administrative services certifies is comparable in compensation to the position the person previously held in the classified service. Service in the position in the unclassified service shall be counted as service in the position in the classified service held by the person immediately prior to the person's appointment in the unclassified service. When a person is reinstated to a position in the classified service as provided in this division, the person is entitled to all rights, status, and benefits accruing to the position during the person's time of service in the position in the unclassified service.

(3) Reorganize the work of the bureau, its sections, departments, and offices to the extent necessary to achieve the most efficient performance of its functions and to that end may establish, change, or abolish positions and assign and reassign duties and responsibilities of every employee of the bureau. All persons employed by the commission in positions that, after November 3, 1989, are supervised and directed by the administrator under this section are transferred to the bureau in their

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

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

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

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

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

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

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

(10) As promptly as possible in the course of efficient administration, decentralize and relocate such of the personnel and activities of the bureau as is appropriate to the end that the receipt, investigation, determination, and payment of claims may be undertaken at or near the place of injury or the residence of the claimant and for that purpose establish regional offices, in such places as the administrator considers proper, capable of discharging as many of the functions of the bureau as is



practicable so as to promote prompt and efficient administration in the processing of claims. All active and inactive lost-time claims files shall be held at the service office responsible for the claim. A claimant, at the claimant's request, shall be provided with information by telephone as to the location of the file pertaining to the claimant's claim. The administrator shall ensure that all service office employees report directly to the director for their service office.

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

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

(13) Ensure that all employees of the bureau follow the orders and rules of the commission as such orders and rules relate to the commission's overall adjudicatory policy-making and management duties under this chapter and Chapters 4123., 4127., and 4131. of the Revised Code.

(14) Manage and operate a data processing system with a common data base for the use of both the bureau and the commission and, in consultation with the commission, using electronic data processing equipment, shall develop a claims tracking system that is sufficient to monitor the status of a claim at any time and that lists appeals that have been filed and orders or determinations that have been issued pursuant to section 4123.511 or 4123.512 of the Revised Code, including the dates of such filings and issuances.

(15) Establish and maintain a medical section within the bureau. The medical section shall do all of the following:

(a) Assist the administrator in establishing standard medical fees, approving medical procedures, and determining eligibility and reasonableness of the compensation payments for medical, hospital, and nursing services, and in establishing guidelines for payment policies which recognize usual, customary, and reasonable methods of payment for covered services;

(b) Provide a resource to respond to questions from claims examiners for employees of the bureau;

(c) Audit fee bill payments;

(d) Implement a program to utilize, to the maximum extent possible, electronic data processing equipment for storage of information to facilitate authorizations of compensation payments for medical, hospital, drug, and nursing services;

(e) Perform other duties assigned to it by the administrator.

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

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

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

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

(20) Prepare and submit to the board information the administrator considers pertinent or the board requires, together with the administrator's recommendations, in the form of administrative rules, for the advice and consent of the board, for the health partnership program and the qualified health plan system, as provided in sections 4121.44, 4121.441, and 4121.442 of the Revised Code.

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

Sec. 4123.01. As used in this chapter:

(A)(1) "Employee" means:

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

As used in division (A)(1)(a) of this section, the term "employee" includes the following persons when responding to an inherently dangerous situation that calls for an immediate response on the part of the person, regardless of whether the person is within the limits of the jurisdiction of the person's regular employment or voluntary service when responding, on the condition that the person responds to the situation as the person otherwise would if the person were on duty in the person's jurisdiction:

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

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

(iii) Off-duty first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, or emergency medical technicians-paramedic, whether paid or volunteer, of

an ambulance service organization or emergency medical service organization pursuant to Chapter 4765. of the Revised Code.

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

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

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

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

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

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

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

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

(vii) The person's hours of work are established by the other contracting party;

(viii) The person is required to devote full time to the business of the other contracting party;

(ix) The person is required to perform the work on the premises of the other contracting party;

(x) The person is required to follow the order of work set by the other contracting party;

(xi) The person is required to make oral or written reports of progress to the other contracting party;

(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;

(xiii) The person's expenses are paid for by the other contracting party;

(xiv) The person's tools and materials are furnished by the other contracting party;

(xv) The person is provided with the facilities used to perform services;

(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;

(xvii) The person is not performing services for a number of employers at the same time;

(xviii) The person does not make the same services available to the general public;

(xix) The other contracting party has a right to discharge the person;

(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.

Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or 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 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 describes the relationship between the person and the carrier to be that of an independent contractor and not that of an employee.

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

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

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

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

(b) Any officer of a family farm corporation;

(c) An individual incorporated as a corporation;

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

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

(f)(i) A qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code when the qualifying employee is performing disaster work in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

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

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

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

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

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

(B)(1) "Employer" means:

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

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

All such employers are subject to this chapter. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a

household establishment, shall be considered an employee in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more employees and the employer shall report the income derived from such labor to the bureau as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

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

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

(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;

(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;

(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;

(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.

(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.

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

(F) "Occupational disease" means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from

the public in general.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Except as otherwise provided in division (C) of this section, every private employer employing one or more employees regularly in the same business, or in or about the same establishment, shall submit a payroll report to the bureau. Until the policy year commencing July 1, 2015, a private employer shall submit the payroll report in January of each year. For a policy year commencing on or after July 1, 2015, the employer shall submit the payroll report on or before August fifteenth of each year unless otherwise specified by the administrator in rules the

administrator adopts. The employer shall include all of the following information in the payroll report, as applicable:

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

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

(3) The number of such employees localized in this state employed at each kind of employment and the aggregate amount of wages paid to such employees;

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

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

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

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

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

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

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

(E) No private employer shall fail to furnish to the bureau the payroll report required by this



section, nor shall any employer fail to keep records of or furnish such other information as may be required by the bureau under this section.

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

Sec. 4123.291. (A) An adjudicating committee appointed by the administrator of workers' compensation to hear any matter specified in divisions (B)(1) to (7) of this section shall hear the matter within sixty days of the date on which an employer files the request, protest, or petition. An employer desiring to file a request, protest, or petition regarding any matter specified in divisions (B) (1) to (7) of this section shall file the request, protest, or petition to the adjudicating committee on or before twenty-four months after the administrator sends notice of the determination about which the employer is filing the request, protest, or petition.

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

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

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

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

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

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

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

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

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

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

Sec. 4123.32. The administrator of workers' compensation, with the advice and consent of the bureau of workers' compensation board of directors, shall adopt rules with respect to the collection,

maintenance, and disbursements of the state insurance fund including all of the following:

(A) A rule providing for ascertaining the correctness of any employer's report of estimated or actual expenditure of wages and the determination and adjustment of proper premiums and the payment of those premiums by the employer;

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

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

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

(1) If an employer fails to file a report of the employer's actual payroll expenditures pursuant to section 4123.26 of the Revised Code for private employers or pursuant to section 4123.41 of the Revised Code for public employers, the premium and assessments due from the employer for the period shall be calculated based on the estimated payroll of the employer used in calculating the estimated premium due, increased by ten per cent;

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

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

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

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

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

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

(vi) For each additional thirty-day period or portion thereof that a premium 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 premium due.

(b) For purposes of division (D)(2)(a) 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.

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

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

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

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

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

(7) Any deficiencies in the amounts of the premium security deposit paid by an employer prior to July 1, 2015, shall be subject to an interest charge of six per cent per annum from the date the premium obligation is incurred. In determining the interest due on deficiencies in premium security deposit payments, a charge in each case shall be made against the employer in an amount equal to interest at the rate of six per cent per annum on the premium security deposit due but remaining unpaid sixty days after notice by the administrator.

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

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

(F) A rule providing that each employer, on the occasion of instituting coverage under this chapter, shall submit an application fee and an application for coverage that completely provides all of the information required for the administrator to establish coverage for that employer, and that the employer's failure to pay the application fee or to provide all of the information requested on the application may be grounds for the administrator to deny coverage for that employer.

(G) A rule providing that, in addition to any other remedies permitted in this chapter, the administrator may discontinue an employer's coverage if the employer fails to pay the premium due

on or before the premium's due date.

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

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

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

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

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

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

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

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

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

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

Sec. 4123.35. (A) Except as provided in this section, and until the policy year commencing July 1, 2015, every private employer and every publicly owned utility shall pay semiannually in the months of January and July into the state insurance fund the amount of annual premium the administrator of workers' compensation fixes for the employment or occupation of the employer, the amount of which premium to be paid by each employer to be determined by the classifications, rules, and rates made and published by the administrator. The employer shall pay semiannually a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator.

Except as otherwise provided in this section, for a policy year commencing on or after July 1, 2015, every private employer and every publicly owned utility shall pay annually in the month of June immediately preceding the policy year into the state insurance fund the amount of estimated annual premium the administrator fixes for the employment or occupation of the employer, the amount of which estimated premium to be paid by each employer to be determined by the

classifications, rules, and rates made and published by the administrator. The employer shall pay a further sum of money into the state insurance fund as may be ascertained to be due from the employer by applying the rules of the administrator. Upon receipt of the payroll report required by division (B) of section 4123.26 of the Revised Code, the administrator shall adjust the premium and assessments charged to each employer for the difference between estimated gross payrolls and actual gross payrolls, and any balance due to the administrator shall be immediately paid by the employer. Any balance due the employer shall be credited to the employer's account.

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

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

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

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

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

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

receipt of payment under this division.

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

(B) Employers who will abide by the rules of the administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge employers who apply for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application.

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

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

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

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

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

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

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

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

(g) The employer has either an account in a financial institution in this state, or if the employer maintains an account with a financial institution outside this state, ensures that workers'

compensation checks are drawn from the same account as payroll checks or the employer clearly indicates that payment will be honored by a financial institution in this state.

The administrator may waive the requirements of division (B)(1)(a) of this section and the requirement of division (B)(1)(d) of this section that the financial records, documents, and data be certified by a certified public accountant. The administrator shall adopt rules establishing the criteria that an employer shall meet in order for the administrator to waive the requirements of divisions (B)(1)(a) and (d) of this section. Such rules may require additional security of that employer pursuant to division (E) of section 4123.351 of the Revised Code.

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

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

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

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

(c) For the five-year period preceding application under this section, the public employer, to the extent applicable, has complied fully with the continuing disclosure requirements established in rules adopted by the United States securities and exchange commission under 17 C.F.R. 240.15c 2-12.

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

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

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

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

(h) The public employer agrees to generate an annual accumulating book reserve in its financial statements reflecting an actuarially generated reserve adequate to pay projected claims

under this chapter for the applicable period of time, as determined by the administrator.

(i) For a public employer that is a hospital, the public employer shall submit audited financial statements showing the hospital's overall liquidity characteristics, and the administrator shall determine, on an individual basis, whether the public employer satisfies liquidity standards equivalent to the liquidity standards of other public employers.

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

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

(C) A board of county commissioners described in division (G) of section 4123.01 of the Revised Code, as an employer, that will abide by the rules of the administrator and that may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is provided for in sections 4123.52, 4123.55 to 4123.62, and 4123.64 to 4123.67 of the Revised Code, and that does not desire to insure the payment thereof or indemnify itself against loss sustained by the direct payment thereof, upon a finding of such facts by the administrator, may be granted the privilege to pay individually compensation, and furnish medical, surgical, nursing, and hospital services and attention and funeral expenses directly to injured employees or the dependents of killed employees, thereby being granted status as a self-insuring employer. The administrator may charge a board of county commissioners described in division (G) of section 4123.01 of the Revised Code that applies for the status as a self-insuring employer a reasonable application fee to cover the bureau's costs in connection with processing and making a determination with respect to an application. All employers granted such status shall demonstrate sufficient financial and administrative ability to assure that all obligations under this section are promptly met. The administrator shall deny the privilege where the employer is unable to demonstrate the employer's ability to promptly meet all the obligations imposed on the employer by this section. The administrator shall consider, but is not limited to, the following factors, where applicable, in determining the employer's ability to meet all of the obligations imposed on the board as an employer by this section:

- (1) The board has operated in this state for a minimum of two years;
- (2) Where the board previously contributed to the state insurance fund or is a successor employer as defined by bureau rules, the amount of the buyout, as defined by bureau rules;
- (3) The sufficiency of the board's assets located in this state to insure the board's solvency in paying compensation directly;
- (4) The financial records, documents, and data, certified by a certified public accountant, necessary to provide the board's full financial disclosure. The records, documents, and data include, but are not limited to, balance sheets and profit and loss history for the current year and previous four years.



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

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

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

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

(D) The administrator shall require a surety bond from all self-insuring employers, issued pursuant to section 4123.351 of the Revised Code, that is sufficient to compel, or secure to injured employees, or to the dependents of employees killed, the payment of compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to the fund, except when an employee of the employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of the members as the result of any injury sustained in the course of and arising out of the employee's employment, the compensation to be paid by the self-insuring employer is limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the bureau out of the surplus created by section 4123.34 of the Revised Code.

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

Employers shall secure directly from the bureau central offices application forms upon which the bureau shall stamp a designating number. Prior to submission of an application, an employer shall make available to the bureau, and the bureau shall review, the information described in division (B) (1) of this section, and public employers shall make available, and the bureau shall review, the information necessary to verify whether the public employer meets the requirements listed in division (B)(2) of this section. An employer shall file the completed application forms with an application fee, which shall cover the costs of processing the application, as established by the administrator, by rule, with the bureau at least ninety days prior to the effective date of the employer's new status as a self-insuring employer. The application form is not deemed complete until all the required information is attached thereto. The bureau shall only accept applications that contain the required information.

(F) The bureau shall review completed applications within a reasonable time. If the bureau determines to grant an employer the status as a self-insuring employer, the bureau shall issue a statement, containing its findings of fact, that is prepared by the bureau and signed by the

administrator. If the bureau determines not to grant the status as a self-insuring employer, the bureau shall notify the employer of the determination and require the employer to continue to pay its full premium into the state insurance fund. The administrator also shall adopt rules establishing a minimum level of performance as a criterion for granting and maintaining the status as a self-insuring employer and fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim.

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

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

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

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

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

(I) A self-insuring employer that returns to the state insurance fund as a state fund employer shall provide the administrator with medical costs and indemnity costs by claim, and payroll by manual classification and year, and such other information the administrator may require. The self-insuring employer shall submit this information by dates and in a format determined by the administrator. The administrator shall develop a state fund experience modification factor for a self-insuring employer that returns to the state insurance fund based in whole or in part on the employer's self-insured experience and the information submitted.

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

(1) The total assessment against all self-insuring employers as a class for each fund and for the administrative costs for the year that the assessment is being made, as determined by the

administrator, divided by the total amount of paid compensation for the previous calendar year attributable to all amenable self-insuring employers;

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

In determining the total amount due for the total assessment against all self-insuring employers as a class for each fund and the administrative assessment, the administrator shall reduce proportionately the total for each fund and assessment by the amount of money in the self-insurance assessment fund as of the date of the computation of the assessment.

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

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

(K) There is hereby created in the state treasury the self-insurance assessment fund. All investment earnings of the fund shall be deposited in the fund. The administrator shall use the money in the self-insurance assessment fund only for administrative costs as specified in section 4123.341 of the Revised Code.

(L) Every self-insuring employer shall certify, in affidavit form subject to the penalty for perjury, to the bureau the amount of the self-insuring employer's paid compensation for the previous calendar year. In reporting paid compensation paid for the previous year, a self-insuring employer shall exclude from the total amount of paid compensation any reimbursement the self-insuring employer receives in the previous calendar year from the surplus fund pursuant to section 4123.512 of the Revised Code for any paid compensation. The self-insuring employer also shall exclude from the paid compensation reported any amount recovered under section 4123.931 of the Revised Code and any amount that is determined not to have been payable to or on behalf of a claimant in any final administrative or judicial proceeding. The self-insuring employer shall exclude such amounts from the paid compensation reported in the reporting period subsequent to the date the determination is made. The administrator shall adopt rules, in accordance with Chapter 119. of the Revised Code, that

provide for all of the following:

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

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

(a) For an assessment from sixty-one to ninety days past due, the prime interest rate, multiplied by the assessment due;

(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;

(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;

(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;

(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;

(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.

(3) An employer may appeal a late fee penalty and penalty assessment to the administrator.

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.

The administrator shall include any assessment and penalties that remain unpaid for previous assessment periods in the calculation and collection of any assessments due under this division or division (J) of this section.

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

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

(O) The administrator may grant a self-insuring employer the privilege to self-insure a construction project entered into by the self-insuring employer that is scheduled for completion

within six years after the date the project begins, and the total cost of which is estimated to exceed one hundred million dollars or, for employers described in division (R) of this section, if the construction project is estimated to exceed twenty-five million dollars. The administrator may waive such cost and time criteria and grant a self-insuring employer the privilege to self-insure a construction project regardless of the time needed to complete the construction project and provided that the cost of the construction project is estimated to exceed fifty million dollars. A self-insuring employer who desires to self-insure a construction project shall submit to the administrator an application listing the dates the construction project is scheduled to begin and end, the estimated cost of the construction project, the contractors and subcontractors whose employees are to be self-insured by the self-insuring employer, the provisions of a safety program that is specifically designed for the construction project, and a statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the construction project exists between the self-insuring employer and a labor organization.

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

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

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

Upon approval of the application, the administrator shall mail a certificate granting the privilege to self-insure the construction project to the self-insuring employer. The certificate shall contain the name of the self-insuring employer and the name, address, and telephone number of the self-insuring employer's representatives who are responsible for administering workers' compensation claims for the construction project. The self-insuring employer shall post the certificate in a conspicuous place at the site of the construction project.

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

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

A self-insuring employer who complies with this division is entitled to the protections provided under this chapter and Chapter 4121. of the Revised Code with respect to the employees of the contractors and subcontractors covered under a certificate issued under this division for death or injuries that arise out of, or death, injuries, or occupational diseases that arise in the course of, those

employees' employment on that construction project, as if the employees were employees of the self-insuring employer, provided that the self-insuring employer also complies with this section. No employee of the contractors and subcontractors covered under a certificate issued under this division shall be considered the employee of the self-insuring employer listed in that certificate for any purposes other than this chapter and Chapter 4121. of the Revised Code. Nothing in this division gives a self-insuring employer authority to control the means, manner, or method of employment of the employees of the contractors and subcontractors covered under a certificate issued under this division.

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

The contractors and subcontractors included under a certificate issued under this division shall identify in their payroll records the employees who are considered the employees of the self-insuring employer listed in that certificate for purposes of this chapter and Chapter 4121. of the Revised Code, and the amount that those employees earned for employment on the construction project that is the subject of that certificate. Notwithstanding any provision to the contrary under this chapter and Chapter 4121. of the Revised Code, the administrator shall exclude the payroll that is reported for employees who are considered the employees of the self-insuring employer listed in that certificate, and that the employees earned for employment on the construction project that is the subject of that certificate, when determining those contractors' or subcontractors' premiums or assessments required under this chapter and Chapter 4121. of the Revised Code. A self-insuring employer issued a certificate under this division shall include in the amount of paid compensation it reports pursuant to division (L) of this section, the amount of paid compensation the self-insuring employer paid pursuant to this division for the previous calendar year.

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

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

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

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

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

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

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

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

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

(1) Whether the self-insuring employer has an organizational plan for the administration of the workers' compensation law;

(2) Whether the safety program that is specifically designed for the construction project provides for the safety of employees employed on the construction project, is applicable to all contractors and subcontractors who perform labor or work or provide materials for the construction project, and has as a component, a safety training program that complies with standards adopted pursuant to the "Occupational Safety and Health Act of 1970," 84 Stat. 1590, 29 U.S.C.A. 651, and provides for continuing management and employee involvement;

(3) Whether granting the privilege to self-insure the construction project will reduce the costs of the construction project;

(4) Whether the self-insuring employer has employed an ombudsperson as required under division (P) of this section;

(5) Whether the self-insuring employer has sufficient surety to secure the payment of claims for which the self-insuring employer would be responsible pursuant to the granting of the privilege to self-insure a construction project under division (O) of this section.

(R) As used in divisions (O), (P), and (Q), "self-insuring employer" includes the following employers, whether or not they have been granted the status of being a self-insuring employer under division (B) of this section:

(1) A state institution of higher education;

(2) A school district;

(3) A county school financing district;

(4) An educational service center;

(5) A community school established under Chapter 3314. of the Revised Code;

(6) A municipal power agency as defined in section 3734.058 of the Revised Code.

(S) As used in this section:

(1) "Unvoted debt capacity" means the amount of money that a public employer may borrow without voter approval of a tax levy;

(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.

Sec. 4133.01. As used in this chapter:

(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.

(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.

(C) "Client employer" means a sole proprietor, partnership, association, limited liability company, or corporation that enters into an alternate employer organization agreement and shares employer responsibility and liability with the alternate employer organization.

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

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

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

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

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

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

(1) Process and pay all wages and applicable state and federal payroll taxes associated with the worksite employee, irrespective of payments made by the client employer, pursuant to the terms and conditions of compensation in the alternate employer organization agreement between the alternate employer organization and the client employer;

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

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



persons:

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

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

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

(7) Make periodic reports, as determined by the administrator of workers' compensation, of client employers and total workforce to the administrator;

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

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

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

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

(C) An alternate employer organization shall file federal payroll taxes entirely under the tax identification number of the client employer, but shall remain jointly and severally liable for all wages and payroll taxes associated with worksite employees. In addition, if any of the alternate employer organization's clients fail to transmit payment to the alternate employer organization sufficient to cover payment of all wages and employer-paid taxes, the alternate employer organization shall keep a record of the nonpayment or underpayment and a record that the alternate employer organization nonetheless paid the wages and taxes owed.

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

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

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

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

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

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

(2) For purposes of division (F) of this section, an alternate employer organization has provided the required information to the client employer when the information is received by the United States postal service or when the information is personally delivered, in writing, directly to the client employer.

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

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

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

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

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

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

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

(2) A client employer shall not be liable for the acts, errors, and omissions of an alternate employer organization or a worksite employee when those acts, errors, and omissions occur under the direction and control of the alternate employer organization.

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

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

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

(L) The use of a client employer's tax identification number for federal payroll tax purposes as required under division (C) of this section shall not be construed to absolve the alternate employer

organization of any responsibilities or liabilities applicable to an alternative employer organization, including those under federal law.

Sec. 4133.04. (A) When a client employer enters into an alternate employer organization agreement with an alternate employer organization, the alternate employer organization is the employer of record and the succeeding employer for the purposes of determining a workers' compensation experience rating pursuant to Chapter 4123. of the Revised Code.

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

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

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

(1) A client employer shall be entitled to the benefit of any tax credit, economic incentive, or similar benefit arising as the result of the client employer's employment of worksite employees. If the grant or amount of any tax credit, economic incentive, or other benefit is based on number of employees, each client employer shall be treated as employing only those worksite employees employed by the client employer. Worksite employees working for other client employers of the alternate employer organization shall not be counted as employees for that purpose.

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

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

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

(D) For purposes of computing any tax that is imposed or calculated upon the basis of total payroll, the alternate employer organization shall be eligible to use any small business allowance or exemption based solely on the employees of the alternate employer organization who are not worksite employees with any client employer. The eligibility of a client employer for the allowance or exemption shall be based solely upon the payroll of the employees of the client employer, including any worksite employees employed by the client employer.

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

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

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

(2) A fee as determined by the administrator;

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

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

(5) The alternate employer organization's taxpayer or employer identification number;

(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;

(7) The most recent financial statement prepared and audited pursuant to division (B) of section 4133.08 of the Revised Code;

(8) A bond or letter of credit in accordance with division (D)(1) of this section;

(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.

(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:

(1) A properly executed request for limited registration on a form provided by the administrator;

(2) All information and materials required for registration in divisions (B)(1) to (6) of this section;

(3) Information and documentation necessary to show that the alternate employer organization satisfies all of the following criteria:

(a) It is domiciled outside of this state.

(b) It is licensed or registered as an alternate employer organization in another state.

(c) It does not maintain an office in this state.

(d) It does not participate in direct solicitations for client employers located or domiciled in this state.

(e) It has fifty or fewer worksite employees employed or domiciled in this state on any given day.

(D)(1) An alternate employer organization shall provide security in the form of a bond or letter of credit assignable to the Ohio bureau of workers' compensation in an amount necessary to meet the financial obligations of the alternate employer organization pursuant to this chapter and Chapters 4121. and 4123. of the Revised Code. The administrator shall determine the amount of the bond required under this division for each registrant, which shall be at least one million dollars.

(2) An alternate employer organization may appeal the amount of the security required pursuant to rules adopted under division (D)(1) of this section in accordance with section 4123.291 of the Revised Code.

(3) An alternate employer organization shall pay premiums and assessments for purposes of Chapters 4121. and 4123. of the Revised Code on a monthly basis pursuant to division (A) of section 4123.35 of the Revised Code.

(E) Notwithstanding division (D) of this section, an alternate employer organization that qualifies for self-insurance or retrospective rating under section 4123.29 or 4123.35 of the Revised Code shall abide by the financial disclosure and security requirements pursuant to those sections and the rules adopted under those sections in place of the requirements specified in division (D) of this section or specified in rules adopted pursuant to that division.

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

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

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

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

(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.

(K) An alternate employer organization may not own or co-own an affiliated professional

employer organization or alternate employer organization.

(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.

(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.

(2) As used in this division:

(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.

(b) "Health care services" has the same meaning as in section 3922.01 of the Revised Code.

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 the bureau, the alternate employer organization shall submit to the administrator of workers' compensation a quarterly financial statement for each calendar quarter during which there is a deficit in working capital, accompanied by an attestation of the chief executive officer, president, or other individual who serves as the controlling person of the alternate employer organization that all wages, taxes, workers' compensation premiums, and employee benefits have been paid by the alternate employer organization. The bond or letter of credit required under division (D)(1) of section 4133.07 of the Revised Code shall be held by a depository designated by the administrator and shall secure payment by the alternate employer organization of all taxes, wages, benefits, or other entitlements due or otherwise pertaining to worksite employees, if the alternate employer organization does not make those payments when due.

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

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

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

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

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

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

(C) The bureau shall deny initial or annual registration to an applicant that does not meet the

requirements of this section.

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

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

(2) Misappropriated any funds of the client employer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The administrator shall use the information provided under division (C) of this section to 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.

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

(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.

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.

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.

Sec. 4133.12. Nothing contained in this chapter or in any alternate employer organization agreement shall affect, modify, or amend any collective bargaining agreement that exists on the effective date of this section. Nothing in this chapter shall alter the rights or obligations of any client employer, alternate employer organization, or worksite employee under the "National Labor Relations Act," 49 Stat. 449, 29 U.S.C. 151 et seq., the "Railway Labor Act," 44 Stat. 577, 45 U.S.C. 151, or any other applicable federal or state law.

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

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

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

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

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

An alternate employer organization shall have no responsibility or liability in connection with, or arising out of, any contractual relationship or restrictive covenant between a client employer and a worksite employee unless the alternate employer organization has specifically agreed otherwise in writing.

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

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

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 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 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 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 the professional employer organization or professional employer organization reporting entity. The combined experience shall remain with the client 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) of this section collectively as a single filing with the director.

(5) 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.

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

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

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

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

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

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

(3) For the purposes of Chapters 5733. and 5747. of the Revised Code, the profit or net income of the qualifying entity shall be increased by disallowing all amounts representing expenses, other than amounts described in division (A)(7) of this section, that the qualifying entity paid to or

incurred with respect to direct or indirect transactions with one or more related members, excluding the cost of goods sold calculated in accordance with section 263A of the Internal Revenue Code and United States department of the treasury regulations issued thereunder. Nothing in division (A)(3) of this section shall be construed to limit solely to this chapter the application of section 263A of the Internal Revenue Code and United States department of the treasury regulations issued thereunder.

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

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

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

(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;

(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.

(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.

(D) "Fiscal year" means an accounting period ending on any day other than the thirty-first day of December.

(E) "Individual" means a natural person.

(F) "Month" means a calendar month.

(G) "Distributive share" includes the sum of the income, gain, expense, or loss of a disregarded entity or qualified subchapter S subsidiary.

(H) "Investor" means any person that, during any portion of a taxable year of a qualifying pass-through entity, is a partner, member, shareholder, or investor in that qualifying pass-through entity.

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

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

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

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

(4) An investor that is another qualifying pass-through entity having only investors described in division (I)(1), (2), (3), or (6) of this section during the three-year period beginning twelve months prior to the first day of the qualifying taxable year of the qualifying pass-through entity.

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

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

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

(a) The investor submits a written statement to the qualifying pass-through entity stating that the investor irrevocably agrees that the investor has nexus with this state under the Constitution of the United States and is subject to and liable for the tax calculated under division (A) or (B) of section 5733.06 of the Revised Code with respect to the investor's adjusted qualifying amount for the entire qualifying taxable year of the qualifying pass-through entity. The statement is subject to the penalties of perjury, shall be retained by the qualifying pass-through entity for no fewer than seven years, and shall be delivered to the tax commissioner upon request.

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

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

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

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

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

(b) A person that is or may be the beneficiary of or the recipient of payments from a trust or fund that is a nuclear decommissioning reserve fund, a designated settlement fund, or any other trust or fund established to resolve and satisfy claims that may otherwise be asserted by the beneficiary or a member of the beneficiary's family. Sections 267(c)(4), 468A(e), and 468B(d)(2) of the Internal

Revenue Code apply to the determination of whether such a person satisfies division (I)(9) of this section.

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

For the purposes of division (I)(9) of this section, a trust or fund shall be considered to have a beneficiary other than persons described under divisions (I)(9)(a) to (c) of this section if a beneficiary would not qualify under those divisions under the doctrines of "economic reality," "sham transaction," "step doctrine," or "substance over form." A trust or fund described in division (I)(9) of this section bears the burden of establishing by a preponderance of the evidence that any transaction giving rise to the tax benefits provided under division (I)(9) of this section does not have as a principal purpose a claim of those tax benefits. Nothing in this section shall be construed to limit solely to this section the application of the doctrines referred to in this paragraph.

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

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

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

(M) "Qualifying trust" means a trust subject to subchapter J of the Internal Revenue Code that, during any portion of the trust's qualifying taxable year, has income or gain from the acquisition, management, ownership, use, or disposition of tangible personal property located in this state at any time during the trust's qualifying taxable year or real property located in this state. "Qualifying trust" does not include a person described in section 501(c) of the Internal Revenue Code or a person described in division (C) of section 5733.09 of the Revised Code.

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

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

(P) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section. However, for the purposes of divisions (A)(3) and (4) of this section only, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section, but shall be

applied by substituting "forty per cent" for "twenty per cent" wherever "twenty per cent" appears in division (A) of that section.

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

(R) "Qualifying taxable year" means the calendar year or the qualifying entity's fiscal year ending during the calendar year, or fractional part thereof, for which the adjusted qualifying amount is calculated pursuant to sections 5733.40 and 5733.41 or sections 5747.40 to 5747.453 of the Revised Code.

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

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

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

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

(4) "~~Client employer," "professional"~~Professional employer organization," "professional employer organization agreement," and "professional employer organization reporting entity" have the same meanings as in section 4125.01 of the Revised Code.

(5) "Alternate employer organization" and "alternate employer organization agreement" have the same meanings as in section 4133.01 of the Revised Code.

(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.

(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:

(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.

(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 weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. 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.

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

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

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

(D)(1) The requirements of division (B) of this section are met if the amount paid is not less than ninety-five per cent of the actual tax withheld or required to be withheld for the prior quarterly, monthly, or partial weekly withholding period, and the underpayment is not due to willful neglect. Any underpayment of withheld tax shall be paid within thirty days of the date on which the withheld tax was due without regard to division (D)(1) of this section. An employer described in division (B) (1) or (2) of this section shall make the payment by electronic funds transfer under section 5747.072 of the Revised Code.

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

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

(a) Based upon annualization of payments made or required to be made during the preceding calendar year and during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

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

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

(2) In addition to other returns required to be filed and payments required to be made under this section, every employer required to deduct and withhold taxes shall file, not later than the thirty-first day of January of each year, an annual return covering, but not limited to, both the aggregate amount deducted and withheld and the aggregate amount required to be deducted and withheld during the entire preceding year for the tax imposed under section 5747.02 of the Revised Code and for each tax imposed under Chapter 5748. of the Revised Code. At the time of filing that return, the employer shall pay over any amounts of undeposited taxes for the preceding year, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. The employer shall make the annual report, to each employee and to the tax commissioner, of the compensation paid and each tax withheld, as the commissioner by rule may prescribe.

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

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

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

(2) The social security number of each employee;

(3) The total amount of compensation paid before any deductions to each employee for the period for which the annual return is made;

(4) The amount of the tax imposed by section 5747.02 of the Revised Code and the amount

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

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

(G) An employee of a corporation, limited liability company, or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer, member, manager, or trustee of a corporation, limited liability company, or business trust who is responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge a responsible officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay tax due.

(H) If an employer required to deduct and withhold income tax from compensation and to pay that tax to the state under sections 5747.06 and 5747.07 of the Revised Code sells the employer's business or stock of merchandise or quits the employer's business, the taxes required to be deducted and withheld and paid to the state pursuant to those sections prior to that time, together with any interest and penalties imposed on those taxes, become due and payable immediately, and that person shall make a final return within fifteen days after the date of selling or quitting business. The employer's successor shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid, until the former owner produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid or a certificate indicating that no such taxes are due. If the purchaser of the business or stock of merchandise fails to withhold purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the former owner. If the amount of taxes, interest, and penalties outstanding at the time of the purchase exceeds the total purchase money, the tax commissioner in the commissioner's discretion may adjust the liability of the seller or the responsibility of the purchaser to pay that liability to maximize the collection of withholding tax revenue.

(I) An employer whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding

calendar year shall make all payments required by this section for the year by electronic funds transfer under section 5747.072 of the Revised Code.

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

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

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

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

(2) Beginning with the calendar quarter ending after a professional employer organization ~~or~~, professional employer organization reporting entity, or alternate employer organization files the report required under division (J)(1) of this section, and every calendar quarter thereafter, the ~~professional employer organization or the professional employer organization reporting entity~~ shall file an updated report with the tax commissioner. The ~~professional employer organization or professional employer organization reporting entity~~ shall file the updated report not later than the last day of the month following the end of the calendar quarter and shall include all of the following information in the report:

(a) If an entity became a client employer of the professional employer organization ~~or~~, professional employer organization reporting entity, or alternate employer organization at any time during the calendar quarter, all of the information required under division (J)(1) of this section for each new client employer;

(b) If an entity terminated the professional employer 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 information described in division (J)(1)(a) of this section for that entity, the date during the calendar quarter that the 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 operations in this state, if applicable;

(c) If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the professional employer organization ~~or~~, professional employer organization reporting entity, or alternate employer organization previously submitted a report under division (J)(1) or (2) of this section, the updated name or mailing address, or both, of the chief executive officer or the chief financial officer, as applicable;

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

Sec. 5751.01. As used in this chapter:



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

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

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

(D) "Taxpayer" means any person, or any group of persons in the case of a consolidated elected taxpayer or combined taxpayer treated as one taxpayer, required to register or pay tax under this chapter. "Taxpayer" does not include excluded persons.

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

(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;

(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:

(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;

(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;

(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 gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

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

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

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

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

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

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

(c) In the case of a partnership, trust, or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per cent or more of the combined beneficial interests of all persons having such an interest in the organization.

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

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

(7) Except as otherwise provided in this division, a pre-income tax trust as defined in section 5747.01 of the Revised Code and any pass-through entity of which such pre-income tax trust owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests. If the pre-income tax trust has made a qualifying pre-income tax trust election under division (EE) of section 5747.01 of the Revised Code, then the trust and the pass-through entities of which it owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests, shall not be excluded persons for purposes of the tax imposed under section 5751.02 of the Revised Code.

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

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

(1) The following are examples of gross receipts:

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

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

- (c) Amounts realized from another's use or possession of the taxpayer's property or capital;
- (d) Any combination of the foregoing amounts.
- (2) "Gross receipts" excludes the following amounts:
  - (a) Interest income except interest on credit sales;
  - (b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;
  - (c) Receipts from the sale, exchange, or other disposition 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 rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;
  - (h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;
  - (i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;
  - (j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;
  - (k) Damages received as the result of litigation in excess of amounts that, if received without

litigation, would be gross receipts;

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

(m) Tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same combined taxpayer or consolidated elected taxpayer group, and reimbursements made by entities that are not members of a combined taxpayer or consolidated elected taxpayer group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under this chapter is required to be reported and paid entirely by one owner, pursuant to the requirements of sections 5751.011 and 5751.012 of the Revised Code;

(n) Pension reversions;

(o) Contributions to capital;

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

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

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

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

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

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

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

(w) Funds received or used by a mortgage broker that is not a dealer in intangibles, other than fees or other consideration, pursuant to a table-funding mortgage loan or warehouse-lending mortgage loan. Terms used in division (F)(2)(w) of this section have the same meanings as in section 1322.01 of the Revised Code, except "mortgage broker" means a person assisting a buyer in obtaining a mortgage loan for a fee or other consideration paid by the buyer or a lender, or a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.

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

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

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

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

(bb) Cash discounts allowed and taken;

(cc) Returns and allowances;

(dd) Bad debts from receipts on the basis of which the tax imposed by this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;

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

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

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

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

(ii) Receipts realized from the sale of agricultural commodities by an agricultural commodity handler, both as defined in section 926.01 of the Revised Code, that is licensed by the director of

agriculture to handle agricultural commodities in this state.

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

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

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

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

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

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

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

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

- (1) Owns or uses a part or all of its capital in this state;
- (2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;
- (3) Has bright-line presence in this state;
- (4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

- (1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is

valued at original cost and rented property is valued at eight times the net annual rental charge.

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

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

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

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

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

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

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

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

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

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

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

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

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

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

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

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

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

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

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

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

(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.

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.

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.



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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Sub. S. B. No. 201

133rd G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_