

As Introduced

**124th General Assembly
Regular Session
2001-2002**

H. B. No. 244

**REPRESENTATIVES Niehaus, Carey, Cates, Clancy, Seitz, Brinkman, Gilb,
Evans, Grendell, Setzer, Schaffer, Flowers, Carmichael, Lendrum, Schuring,
Schmidt, Reinhard, Willamowski, Metzger, Hagan, Sullivan, Allen, Sulzer,
Britton, Carano, Coates**

A B I L L

To amend sections 742.32, 742.35, 742.351, 742.38, and 1
742.56 and to enact sections 742.352 and 742.353 of 2
the Revised Code to modify the penalties assessed 3
against employers who fail to submit certain 4
reports and information to the Ohio Police and Fire 5
Pension Fund and to reduce the amount of certain 6
penalties currently owed by employers. 7

8

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

Section 1. That sections 742.32, 742.35, 742.351, 742.38, and 9
742.56 be amended and sections 742.352 and 742.353 of the Revised 10
Code be enacted to read as follows: 11

Sec. 742.32. The fiscal officer of each employer shall 12
transmit monthly to the secretary of the board of trustees of the 13
Ohio police and fire pension fund a report of employee deductions 14
in such form as the board requires. The report shall show all 15
deductions for the fund made pursuant to section 742.31 of the 16
Revised Code and shall be accompanied by payments covering the 17

total of such deductions. The report shall also include the name 18
of each member for whom deductions were made and the portion of 19
the payment attributed to that member. Separate payments shall be 20
so transmitted for that portion of such deductions made from the 21
salaries of members of the police department and for that portion 22
of such deductions made from the salaries of members of the fire 23
department. A penalty ~~of five per cent of the total amount due for~~ 24
the particular reporting period determined under section 742.352 25
of the Revised Code shall be added assessed when the report in the 26
form required by the board, together with payments to cover the 27
total amount due from the salaries of all employees of the 28
employer, is transmitted ~~thirty or more days~~ after the last day of 29
the month following the last day of the reporting period. The 30
penalty shall be added to and collected on the next succeeding 31
regular employer billing. If the penalty is not paid within ~~three~~ 32
~~months~~ sixty days after it is added to the regular employer 33
billing, interest at a rate determined by the board may be charged 34
on the total amount due and the amount of the penalty from the 35
date the amount is due to the date of payment. 36

The secretary of the board, after making a record of all such 37
receipts and crediting each employee's individual account with the 38
amount deducted from the employee's salary, shall deposit the 39
receipts with the treasurer of state for use as provided by this 40
chapter. Where an employer fails to deduct contributions for any 41
employee and transmit such amounts to the fund, the board may make 42
a determination of the employee's liability for contributions and 43
certify to the employer the amounts due for collection in the same 44
manner and subject to the same penalties as payments due the 45
employer's contributions funds. 46

Sec. 742.35. ~~Each~~ As used in this section, "calendar quarter" 47
means the three-month period ending on the last day of March, 48
June, September, or December. 49

Each employer shall pay its annual police officer employers' 50
contribution and firefighter employers' contribution in four equal 51
installments promptly as provided in sections 742.33 and 742.34 of 52
the Revised Code. ~~Sixty~~ The payment shall be accompanied by a 53
report, in such form as the board of trustees of the Ohio police 54
and fire pension fund requires, that includes the name of each 55
member for whom contributions were made and the payment attributed 56
to that member. If an employer fails to make a payment or submit a 57
report on or before the date that is sixty days after the date an 58
installment is due, any amounts which remain unpaid shall be 59
subject to last day of the calendar quarter, a penalty for late 60
payment in the amount of five per cent determined under section 61
742.352 of the Revised Code shall be assessed against the 62
employer. In addition, interest on past due accounts and penalties 63
may be charged at a rate determined by the board ~~of trustees of~~ 64
~~the Ohio police and fire pension fund~~ from the date the 65
installment is due to the date of payment. 66

Upon certification by the board to the county auditor of an 67
amount due from any employer within the county who is subject to 68
this chapter, by reason of such employer's delinquency in making 69
employer contribution payments to the fund for past ~~years~~ months, 70
such amount shall be withheld from such employer from any funds in 71
the hands of the county treasurer for distribution to such 72
employer. Upon receipt of such certification, the county auditor 73
shall draw a warrant against such funds in favor of the fund for 74
the amount. 75

Sec. 742.351. (A) On receipt of written notice of a member's 76
election to retire under division (C) of section 742.37 of the 77
Revised Code, the Ohio police and fire pension fund shall request 78
from the employer verification of the member's termination date 79
and any other information the fund determines necessary to 80
calculate and pay a pension under that division. The request shall 81

be on a form created by the fund and specify the date by which the 82
information must be received by the fund, which shall be sixty 83
days after the form is sent by the fund. 84

(B)(1) On receipt of a request for information under division 85
(A) of this section, the employer shall complete the form and 86
return it to the fund not later than the date specified by the 87
fund. 88

(2) If the fund does not receive the completed form by the 89
specified date, the fund shall send notice by certified mail to 90
the employer that unless the completed form is received not later 91
than thirty days after the specified date a fine penalty will be 92
imposed. 93

(C) The fund shall assess against an employer that fails to 94
return the completed form by the end of the period described in 95
division (B)(2) of this section a ~~fine of one hundred dollars per~~ 96
~~day. The period for which the fine shall be imposed begins the~~ 97
~~thirty-first day after the date notice is mailed under division~~ 98
~~(B)(2) of this section and ends on the day before the day the~~ 99
~~completed form is received by the fund. Any amount due from an~~ 100
~~employer under this division shall be collected from the county~~ 101
~~auditor in the manner provided in section 742.35 of the Revised~~ 102
~~Code for delinquent contributions penalty determined under section~~ 103
~~742.353 of the Revised Code.~~ 104

(D) The fund shall make one or more monthly payments to a 105
member whose pension does not commence by the ninety-first day 106
after the fund sends a request for information under division (A) 107
of this section due to the employer's failure to return the 108
completed form required under this section. Payment under this 109
division shall commence on the first day of the second month 110
following a month that includes a day for which an assessment 111
against the employer is required under division (C) of this 112
section. The payment shall be an amount equal to ~~one hundred~~ 113

dollars for every day that an assessment is required the penalty 114
assessed under division (C) of this section less any 115
administrative costs incurred by the fund in complying with this 116
section. Payment shall continue on a monthly basis until the 117
member receives the total amount attributable to the required 118
penalty for an employer's failure to return the form that was 119
requested for that member's information. 120

Sec. 742.352. (A) Unless rules are adopted under division (C) 121
of this section, the penalties assessed under sections 742.32, 122
742.35, and 742.56 of the Revised Code shall be as follows: 123

(1) If a report or payment is at least one but not more than 124
ten days past due, one hundred dollars; 125

(2) If a report or payment is at least eleven but not more 126
than thirty days past due, the greater of one thousand dollars or 127
one per cent of the employer's total payroll reported to the Ohio 128
police and fire pension fund for the period covered by the report 129
or payment; 130

(3) If a report or payment is at least thirty-one but not 131
more than one hundred eighty days past due, the greater of three 132
thousand dollars or two per cent of the employer's total payroll 133
reported to the fund for the period covered by the report or 134
payment; 135

(4) If a report or payment is at least one hundred eighty-one 136
days but not more than two hundred ten days past due, the greater 137
of seven thousand five hundred dollars or five per cent of the 138
employer's total payroll reported to the fund for the period 139
covered by the report or payment; 140

(5) If a report or payment is at least two hundred eleven 141
days past due, the sum of the penalty described in division (A)(4) 142
of this section and, for each day that the report or payment is 143
past due after two hundred ten days, fifty dollars. 144

(B) Any amount due from an employer under division (A) of this section shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code. 145
146
147

(C) The board of trustees of the Ohio police and fire pension fund may adopt rules to do all of the following: 148
149

(1) Establish penalties in amounts that do not exceed the amounts described in this section; 150
151

(2) Establish standards to determine whether an employer has submitted a report in the form required by the board; 152
153

(3) Lengthen the periods of time for employers to comply with sections 742.32, 742.35, and 742.56 of the Revised Code. 154
155

Sec. 742.353. (A) Unless rules are adopted in accordance with division (C) of this section, the penalties assessed under sections 742.351 and 742.38 of the Revised Code shall be as follows: 156
157
158
159

(1) If a form, report, or statement is at least one but not more than ten days past due, one hundred dollars; 160
161

(2) If a form, report, or statement is at least eleven but not more than thirty days past due, one thousand dollars; 162
163

(3) If a form, report, or statement is at least thirty-one but not more than one hundred eighty days past due, three thousand dollars; 164
165
166

(4) If a form, report, or statement is at least one hundred eighty-one days but not more than two hundred ten days past due, seven thousand five hundred dollars; 167
168
169

(5) If a form, report, or statement is at least two hundred eleven days past due, the sum of seven thousand five hundred dollars and, for each day that the form, report, or statement is past due after two hundred ten days, three dollars and 170
171
172
173

thirty-seven cents. 174

The total of the penalties paid by an employer under this section in a calendar year shall not exceed twenty thousand dollars. 175
176
177

(B) Any amount due from an employer under division (A) of this section shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code. 178
179
180

(C) The board of trustees of the Ohio police and fire pension fund may adopt rules to do all of the following: 181
182

(1) Establish penalties in amounts that do not exceed the amounts described in this section; 183
184

(2) Establish standards to determine whether an employer has submitted a form, report, or statement in the form required by the board; 185
186
187

(3) Lengthen the periods of time for employers to comply with sections 742.351 and 742.38 of the Revised Code. 188
189

Sec. 742.38. (A)(1) The board of trustees of the Ohio police and fire pension fund shall adopt rules establishing minimum medical testing and diagnostic standards or procedures to be incorporated into physical examinations administered by physicians to prospective members of the fund. The standards or procedures shall include diagnosis and evaluation of the existence of any heart disease, cardiovascular disease, or respiratory disease. The rules shall specify the form of the physician's report and the information to be included in it. 190
191
192
193
194
195
196
197
198

The board shall notify all employers of the establishment of the minimum standards or procedures and shall include with the notice a copy of the standards or procedures. The board shall notify all employers of any changes made to the standards or procedures. Once the standards or procedures take effect, 199
200
201
202
203

employers shall cause each prospective member of the fund to 204
submit to a physical examination that incorporates the standards 205
or procedures. 206

(2) Division (A)(2) of this section applies to an employee 207
who becomes a member of the fund on or after the date the minimum 208
standards or procedures described in division (A)(1) of this 209
section take effect. ~~Not later than thirty days after such an~~ For 210
each employee becomes a member of the fund described in division 211
(A)(2) of this section, the employer shall forward to the board a 212
copy of the physician's report of a physical examination that 213
incorporates the standards or procedures described in division 214
(A)(1) of this section. If an employer fails to forward the report 215
in the form required by the board on or before the date that is 216
sixty days after the employee becomes a member of the fund, the 217
board shall assess against the employer a ~~fine of one hundred~~ 218
~~dollars per day, beginning with the first day after the date the~~ 219
~~report is due and ending on the last day prior to the date the~~ 220
~~report is received by the board. Any amount due from an employer~~ 221
~~under division (A)(2) of this section may be collected from the~~ 222
~~county auditor in the same manner as is provided in section 742.35~~ 223
~~of the Revised Code~~ penalty determined under section 742.353 of 224
the Revised Code. 225

(B) Application for a disability benefit may be made by a 226
member of the fund or, if the member is incapacitated as defined 227
in rules adopted by the board, by a person acting on the member's 228
behalf. Not later than fourteen days after receiving an 229
application for a disability benefit from a member or a person 230
acting on behalf of a member, the board shall notify the member's 231
employer that an application has been filed. The notice shall 232
state the member's position or rank. Not later than twenty-eight 233
days after receiving the notice or filing an application on behalf 234
of a member, the employer shall forward to the board a statement 235

certifying the member's job description and any other information
required by the board to process the application.

If the member applying for a disability benefit becomes a
member of the fund prior to the date the minimum standards or
procedures described in division (A)(1) of this section take
effect, the board may request from the member's employer a copy of
the physician's report of the member's physical examination taken
on entry into the police or fire department. ~~Not later than
twenty-eight days after receiving a request from the board, the
employer shall forward a copy of the report or, if the employer
does not have a copy of the report, a written statement certifying
that the employer does not have a copy of the report. If an
employer fails to forward the report or statement in the form
required by the board on or before the date that is twenty-eight
days after the date of the request, the board shall assess against
the employer a ~~fine of one hundred dollars per day, beginning with
the first day after the date the report or statement is due and
ending on the last day prior to the date the report or statement
is received by the board. Any amount due from an employer under
this division may be collected from the county auditor in the same
manner as is provided in section 742.35 of the Revised Code
penalty determined under section 742.353 of the Revised Code.~~ The
board shall maintain the information submitted under this division
and division (A)(2) of this section in the member's file.~~

(C) For purposes of determining under division (D) of this
section whether a member of the fund is disabled, the board shall
adopt rules establishing objective criteria under which the board
shall make the determination. The rules shall include standards
that provide for all of the following:

(1) Evaluating a member's illness or injury on which an
application for disability benefits is based;

(2) Defining the occupational duties of a police officer or

firefighter;	268
(3) Providing for the board to assign competent and disinterested physicians and vocational evaluators to conduct examinations of a member;	269 270 271
(4) Requiring a written report for each disability application that includes a summary of findings, medical opinions, including an opinion on whether the illness or injury upon which the member's application for disability benefits is based was caused or induced by the actual performance of the member's official duties, and any recommendations or comments based on the medical opinions;	272 273 274 275 276 277 278
(5) Providing for the board to consider the member's potential for retraining or reemployment.	279 280
(D) This division does not apply to members of the fund who have elected to receive benefits and pensions in accordance with division (A) or (B) of section 742.37 of the Revised Code or from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of that fund in force on April 1, 1947.	281 282 283 284 285 286
(1) As used in division (D)(1) of this section:	287
(a) "Totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled.	288 289 290 291 292
(b) "Permanently disabled" means a condition of disability from which there is no present indication of recovery.	293 294
A member of the fund who is permanently and totally disabled as the result of the performance of the member's official duties as a member of a police or fire department shall be paid annual	295 296 297

disability benefits in accordance with division (A) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently and totally disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

298
299
300
301
302

(2) A member of the fund who is partially disabled as the result of the performance of the member's official duties as a member of a police or fire department shall, if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (B) of section 742.39 of the Revised Code. In determining whether a member of the fund is partially disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

303
304
305
306
307
308
309
310
311

(3) A member of the fund who is disabled as a result of heart disease or any cardiovascular or respiratory disease of a chronic nature, which disease or any evidence of which disease was not revealed by the physical examination passed by the member on entry into the department, is presumed to have incurred the disease while performing the member's official duties, unless the contrary is shown by competent evidence.

312
313
314
315
316
317
318

(4) A member of the fund who has completed five or more years of active service in a police or fire department and has incurred a disability not caused or induced by the actual performance of the member's official duties as a member of the department, or by the member's own negligence, shall if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (C) of section 742.39 of the Revised Code. In determining whether a member of the fund is disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

319
320
321
322
323
324
325
326
327
328
329

(5) The board shall notify a member of its final action 330
awarding a disability benefit to the member within thirty days of 331
the final action. The notice shall be sent by certified mail, 332
return receipt requested. Not later than ninety days after receipt 333
of notice from the board, the member shall elect, on a form 334
provided by the board, either to accept or waive the disability 335
benefit award. If the member elects to waive the disability 336
benefit award or fails to make an election within the time period, 337
the award is rescinded. A member who later seeks a disability 338
benefit award shall be required to make a new application, which 339
shall be dealt with in accordance with the procedures used for 340
original disability benefit applications. 341

A person is not eligible to apply for or receive disability 342
benefits under this division, section 742.39 of the Revised Code, 343
or division (C)(2), (3), (4), or (5) of former section 742.37 of 344
the Revised Code unless the person is a member of the fund on the 345
date on which the application for disability benefits is submitted 346
to the fund. 347

With the exception of persons who may make application for 348
increased benefits as provided in division (2) or (4) of this 349
section or division (C)(3) or (5) of former section 742.37 of the 350
Revised Code on or after July 24, 1986, or persons who may make 351
application for benefits as provided in section 742.26 of the 352
Revised Code, no person receiving a pension or benefit under this 353
section or division (C) of former section 742.37 of the Revised 354
Code may apply for any new, changed, or different benefit. 355

Sec. 742.56. (A) The board of trustees of the Ohio police and 356
fire pension fund may by rule establish a payroll deduction plan 357
for payment of the following: 358

(1) The cost of service credit members of the fund are 359
eligible to purchase under this chapter; 360

(2) Charges for participation in programs established under section 742.53 of the Revised Code. 361
362

(B) In addition to any other matter considered relevant by the trustees, the rules shall specify all of the following: 363
364

(1) The types of service credit that may be paid for through payroll deduction, including the section of the Revised Code that authorizes the purchase of each type of service credit for which payment may be made by payroll deduction; 365
366
367
368

(2) The procedure to be followed by a member to inform the member's employer and the Ohio police and fire pension fund that the member wishes to purchase service credit under this chapter or pay for participation in programs established under section 742.53 of the Revised Code and chooses to pay for it through payroll deduction; 369
370
371
372
373
374

(3) The procedure to be followed by the fund to determine for each request the amount to be deducted, the number of deductions to be made, and the interval at which deductions will be made. The rules may provide for a minimum amount for each deduction or a maximum number of deductions for the purchase of any type of credit, but shall provide that no deduction may exceed the member's net compensation after all deductions and withholdings required by law. 375
376
377
378
379
380
381
382

(4) The procedure to be followed by employers in transmitting amounts deducted from the salaries of their employees to the fund; 383
384
385

(5) The procedure to be followed by the fund in crediting service credit to members who choose to purchase it through payroll deduction. 386
387
388

(C) If the trustees of the fund establish a payroll deduction plan under this section, the trustees shall certify to the member's employer for each member for which deductions are to be 389
390
391

made, the amount of each deduction and the payrolls from which
deductions are to be made. The employer shall make the deductions
as certified and transmit the amounts deducted ~~in accordance with~~
~~the rules established by the trustees under this section~~ on or
before the last day of the month following the last day of the
reporting period during which the deductions are made. The
deduction shall be accompanied by a report, in such form as the
board requires, that includes the name of each member for whom
deductions were made and the deductions attributed to that member.
If the employer fails to transmit the deductions or the report on
or before the date that is thirty days after the last day of the
reporting period, a penalty determined under section 742.352 shall
be assessed against the employer. On certification by the board to
the county auditor of an amount due from an employer within the
county who is subject to this division, by reason of the
employer's delinquency in transmitting amounts due under this
division for past months, those amounts shall be withheld from the
employer from any funds in the hands of the county treasurer for
distribution to the employer. On receipt of the certification, the
county auditor shall draw a warrant against the funds in favor of
the Ohio police and fire pension fund for the amount.

392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412

(D) Rules adopted under this section shall not affect any
right to purchase service credit conferred by any other section of
the Revised Code, including the right of a member under any such
section to purchase only part of the service credit the member is
eligible to purchase.

413
414
415
416
417

Section 2. That existing sections 742.32, 742.35, 742.351,
742.38, and 742.56 of the Revised Code are hereby repealed.

418
419

Section 3. (A) As used in this section, "employer" has the
same meaning as in division (D) of section 742.01 of the Revised
Code.

420
421
422

(B)(1) Notwithstanding section 742.38 of the Revised Code, as 423
that section existed immediately prior to the effective date of 424
its amendment by this act, and subject to division (C) of this 425
section, the Board of Trustees of the Ohio Police and Fire Pension 426
Fund shall reduce by ninety per cent a fine incurred prior to the 427
effective date of this section under division (A)(2) of section 428
742.38 of the Revised Code if, prior to that date, the Board 429
received from the employer who is subject to the fine the report 430
that is the subject of the fine and the report was in the form 431
provided in rules adopted by the Board. If the total amount of 432
outstanding fines assessed against an employer under division 433
(A)(2) of section 742.38 of the Revised Code exceeds \$30,000 after 434
the reduction required by this division, the board shall further 435
reduce the total amount of the outstanding fines to \$30,000. 436

(2) Notwithstanding sections 742.32 and 742.35 of the Revised 437
Code, as those sections existed immediately prior to the effective 438
date of their amendment by this act, and subject to division (C) 439
of this section, the Board shall reduce by fifty per cent a 440
penalty incurred under section 742.32 or 742.35 of the Revised 441
Code during the period beginning January 1, 2000, and ending on 442
the effective date of this section, if on or before the date that 443
is six months after the date the report was due, the Board 444
receives from the employer the report that is the subject of the 445
penalty and the report is in the form provided in rules adopted by 446
the Board. 447

(C)(1) Not later than March 1, 2002, an employer shall pay to 448
the Fund the amount of all fines and penalties described in 449
division (B) of this section, as reduced under this section. 450

(2) If an employer fails to pay in accordance with division 451
(C)(1) of this section, the Board shall reinstate to the original 452
amount any fine or penalty that was reduced and the employer shall 453
pay to the Fund the reinstated fine or penalty amount. If the 454

employer fails to pay the reinstated fine or penalty amount, that
amount shall be collected from the county auditor in the same
manner as is provided in section 742.35 of the Revised Code.

455
456
457

(3) To each employer that, prior to the effective date of
this section, paid the full amount of a fine or penalty reduced
under division (B) of this section, the Board shall either refund
the amount of the reduction or use the amount to reduce any
outstanding amounts owed by the employer to the Fund under Chapter
742. of the Revised Code.

458
459
460
461
462
463

(D) Notwithstanding sections 117.28, 117.30, 117.33, 117.36,
117.42, and 131.02 of the Revised Code, no civil action shall be
instituted to recover the amount of a reduction made under
division (B)(1) or (2) of this section. An employer who meets the
requirements of divisions (B) and (C)(1) or divisions (B) and
(C)(3) of this section shall not be required to reimburse the Fund
for any amount not paid as the result of the reduction.

464
465
466
467
468
469
470