

AN ACT

To amend sections 4141.09, 4141.11, 4141.24, and 4141.35 and to enact sections 4141.50 to 4141.56 of the Revised Code to create the SharedWork Ohio Program, to create a monetary penalty for individuals who commit fraud to obtain unemployment compensation benefits, to charge an employer's account when actions of the employer led to an improper payment of unemployment compensation benefits, and to declare an emergency.

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

SECTION 1. That sections 4141.09, 4141.11, 4141.24, and 4141.35 be amended and sections 4141.50, 4141.51, 4141.52, 4141.53, 4141.54, 4141.55, and 4141.56 of the Revised Code be enacted to read as follows:

Sec. 4141.09. (A) There is hereby created an unemployment compensation fund to be administered by the state without liability on the part of the state beyond the amounts paid into the fund and earned by the fund. The unemployment compensation fund shall consist of all contributions, payments in lieu of contributions described in sections 4141.241 and 4141.242 of the Revised Code, reimbursements of the federal share of extended benefits described in section 4141.301 of the Revised Code, collected under sections 4141.01 to ~~4141.46~~ 4141.56 of the Revised Code, and the amount required under division (A)(4) of section 4141.35 of the Revised Code, together with all interest earned upon any moneys deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the "Social Security Act," any property or securities acquired through the use of moneys belonging to the fund, and all earnings of such property or securities. The unemployment compensation fund shall be used to pay benefits, shared work compensation as defined in section 4141.50 of the Revised Code, and refunds as provided by such sections and for no other purpose.

(B) The treasurer of state shall be the custodian of the unemployment

compensation fund and shall administer such fund in accordance with the directions of the director of job and family services. All disbursements therefrom shall be paid by the treasurer of state on warrants drawn by the director. Such warrants may bear the facsimile signature of the director printed thereon and that of a deputy or other employee of the director charged with the duty of keeping the account of the unemployment compensation fund and with the preparation of warrants for the payment of benefits to the persons entitled thereto. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, except as provided in division (C) of this section, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by sections 135.01 to 135.21 of the Revised Code; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of this state. All sums recovered for losses sustained by the unemployment compensation fund shall be deposited therein. The treasurer of state shall be liable on the treasurer's official bond for the faithful performance of the treasurer's duties in connection with the unemployment compensation fund, such liability to exist in addition to any liability upon any separate bond.

(C) The treasurer of state shall maintain within the unemployment compensation fund three separate accounts which shall be a clearing account, a trust fund account, and a benefit account. All moneys payable to the unemployment compensation fund, upon receipt by the director, shall be forwarded to the treasurer of state, who shall immediately deposit them in the clearing account. Refunds of contributions, or payments in lieu of contributions, payable pursuant to division (E) of this section may be paid from the clearing account upon warrants signed by a deputy or other employee of the director charged with the duty of keeping the record of the clearing account and with the preparation of warrants for the payment of refunds to persons entitled thereto. After clearance thereof, all moneys in the clearing account shall be deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the "Social Security Act," in accordance with requirements of the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301, 3304(a)(3), any law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust

fund. Federal funds may be deposited, at the director's discretion, into the benefit account. Any funds deposited into the benefit account shall be disbursed solely for payment of benefits under a federal program administered by this state and for no other purpose. Moneys in the clearing and benefit accounts may be deposited by the treasurer of state, under the direction of the director, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

(D) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the director. The director shall requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this state's account therein, as are deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer of state shall deposit such moneys in the benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not require specific appropriations or other formal release by state officers of money in their custody. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the director, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in division (C) of this section. Unclaimed or unpaid federal funds redeposited with the secretary of the treasury of the United States shall be credited to the appropriate federal account.

(E) No claim for an adjustment or a refund on contribution, payment in lieu of contributions, interest, or forfeiture alleged to have been erroneously or illegally assessed or collected, or alleged to have been collected without authority, and no claim for an adjustment or a refund of any sum alleged to have been excessive or in any manner wrongfully collected shall be allowed unless an application, in writing, therefor is made within four years from the date on which such payment was made. If the director determines that such contribution, payment in lieu of contributions, interest, or forfeiture, or any portion thereof, was erroneously collected, the director shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments, or payments in lieu of contributions, by the employer, or the director may refund said amount, without interest, from

the clearing account of the unemployment compensation fund, except as provided in division (B) of section 4141.11 of the Revised Code. For like cause and within the same period, adjustment or refund may be so made on the director's own initiative. An overpayment of contribution, payment in lieu of contributions, interest, or forfeiture for which an employer has not made application for refund prior to the date of sale of the employer's business shall accrue to the employer's successor in interest.

An application for an adjustment or a refund, or any portion thereof, that is rejected is binding upon the employer unless, within thirty days after the mailing of a written notice of rejection to the employer's last known address, or, in the absence of mailing of such notice, within thirty days after the delivery of such notice, the employer files an application for a review and redetermination setting forth the reasons therefor. The director shall promptly examine the application for review and redetermination, and if a review is granted, the employer shall be promptly notified thereof, and shall be granted an opportunity for a prompt hearing.

(F) If the director finds that contributions have been paid to the director in error, and that such contributions should have been paid to a department of another state or of the United States charged with the administration of an unemployment compensation law, the director may upon request by such department or upon the director's own initiative transfer to such department the amount of such contributions, less any benefits paid to claimants whose wages were the basis for such contributions. The director may request and receive from such department any contributions or adjusted contributions paid in error to such department which should have been paid to the director.

(G) In accordance with section 303(c)(3) of the Social Security Act, and section 3304(a)(17) of the Internal Revenue Code of 1954 for continuing certification of Ohio unemployment compensation laws for administrative grants and for tax credits, any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly, by an equivalent reduction in the Ohio unemployment taxes or otherwise, by the state from amounts in the unemployment compensation fund.

(H) The treasurer of state, under the direction of the director and in accordance with the "Cash Management Improvement Act of 1990," 104 Stat. 1061, 31 U.S.C.A. 335, 6503, shall deposit amounts of interest earned by the state on funds in the benefit account established pursuant to division (C) of this section into the department of job and family services banking fees fund, which is hereby created in the state treasury for the purpose of

paying related banking costs incurred by the state for the period for which the interest is calculated, except that if the deposited interest exceeds the banking costs incurred by the state for the period for which the interest is calculated, the treasurer of state shall deposit the excess interest into the unemployment trust fund.

(I) The treasurer of state, under the direction of the director, shall deposit federal funds received by the director for training and administration and for payment of benefits, job search, relocation, transportation, and subsistence allowances pursuant to the "Trade Act of 1974," 88 Stat. 1978, 19 U.S.C.A. 2101, as amended; the "North American Free Trade Agreement Implementation Act," 107 Stat. 2057 (1993), 19 U.S.C.A. 3301, as amended; and the "Trade Act of 2002," 116 Stat. 993, 19 U.S.C.A. 3801, as amended, into the Trade Act training and administration account, which is hereby created for the purpose of making payments specified under those acts. The treasurer of state, under the direction of the director, may transfer funds from the Trade Act training and administration account to the benefit account for the purpose of making any payments directly to claimants for benefits, job search, relocation, transportation, and subsistence allowances, as specified by those acts.

Sec. 4141.11. There is hereby created in the state treasury the unemployment compensation special administrative fund. The fund shall consist of all interest collected on delinquent contributions pursuant to this chapter, all fines and forfeitures collected under this chapter, the amount required under division (A)(4) of section 4141.35 of the Revised Code, and all court costs and interest paid or collected in connection with the repayment of fraudulently obtained benefits pursuant to section 4141.35 of the Revised Code. All interest earned on the money in the fund shall be retained in the fund and shall not be credited or transferred to any other fund or account, except as provided in division (B) of this section. All moneys which are deposited or paid into this fund may be used by:

(A) The director of job and family services whenever it appears that such use is necessary for:

(1) The proper administration of this chapter and no federal funds are available for the specific purpose for which the expenditure is to be made, provided the moneys are not substituted for appropriations from federal funds, which in the absence of such moneys would be available;

(2) The proper administration of this chapter for which purpose appropriations from federal funds have been requested and approved but not received, provided the fund would be reimbursed upon receipt of the federal appropriation;

(3) To the extent possible, the repayment to the unemployment compensation administration fund of moneys found by the proper agency of the United States to have been lost or expended for purposes other than, or an amount in excess of, those found necessary by the proper agency of the United States for the administration of this chapter.

(B) The director or the director's deputy whenever it appears that such use is necessary for the payment of refunds or adjustments of interest, fines, forfeitures, or court costs erroneously collected and paid into this fund pursuant to this chapter.

(C) The director, to pay state disaster unemployment benefits pursuant to section 4141.292 of the Revised Code.

(D) The director, to pay any costs attributable to the director that are associated with the sale of real property under section 4141.131 of the Revised Code.

Whenever the balance in the unemployment compensation special administrative fund is considered to be excessive by the director, the director shall request the director of budget and management to transfer to the unemployment compensation fund the amount considered to be excessive. Any balance in the unemployment compensation special administrative fund shall not lapse at any time, but shall be continuously available to the director of job and family services for expenditures consistent with this chapter.

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.

~~To~~ (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.

Sec. 4141.35. (A) If the director of job and family services finds that any fraudulent misrepresentation has been made by an applicant for or a recipient of benefits with the object of obtaining benefits to which the applicant or recipient was not entitled, and in addition to any other penalty or forfeiture under this chapter, then the director:

(1) Shall within four years after the end of the benefit year in which the fraudulent misrepresentation was made reject or cancel such person's entire weekly claim for benefits that was fraudulently claimed, or the person's entire benefit rights if the misrepresentation was in connection with the filing of the claimant's application for determination of benefit rights;

(2) Shall by order declare that, for each application for benefit rights and for each weekly claim canceled, such person shall be ineligible for two otherwise valid weekly claims for benefits, claimed within six years subsequent to the discovery of such misrepresentation;

(3) By order shall require that the total amount of benefits rejected or canceled under division (A)(1) of this section be repaid to the director before such person may become eligible for further benefits, and shall withhold such unpaid sums from future benefit payments accruing and otherwise payable to such claimant. Effective with orders issued on or after January 1, 1993, if such benefits are not repaid within thirty days after the director's order becomes final, interest on the amount remaining unpaid shall be charged to the person at a rate and calculated in the same manner as provided under section 4141.23 of the Revised Code. When a person ordered to repay benefits has repaid all overpaid benefits according to a plan approved by the director, the director may cancel the amount of interest that accrued during the period of the repayment plan. The director may take action in any court of competent jurisdiction to collect benefits and interest as provided in sections 4141.23 and 4141.27 of the Revised Code, in regard to the collection of unpaid contributions, using the final repayment order as the basis for such action. Except as otherwise provided in this division, no administrative or legal proceedings for the collection of such benefits or interest due, or for the collection of a penalty under division (A)(4) of this section, shall be initiated after the expiration of six years from the date on which the director's order requiring repayment became final and the amount of any benefits, penalty, or interest not recovered at that time, and any liens thereon, shall be canceled as uncollectible. The time limit for instituting

proceedings shall be extended by the period of any stay to the collection or by any other time period to which the parties mutually agree.

(4) Shall, for findings made on or after October 21, 2013, by order assess a mandatory penalty on such a person in an amount equal to twenty-five per cent of the total amount of benefits rejected or canceled under division (A)(1) of this section. The first sixty per cent of each penalty collected under division (A)(4) of this section shall be deposited into the unemployment compensation fund created under section 4141.09 of the Revised Code, and the remainder of each penalty collected shall be deposited into the unemployment compensation special administrative fund created under section 4141.11 of the Revised Code.

(5) May take action to collect benefits fraudulently obtained under the unemployment compensation law of any other state or the United States or Canada. Such action may be initiated in the courts of this state in the same manner as provided for unpaid contributions in section 4141.41 of the Revised Code.

~~(5)~~(6) May take action to collect benefits that have been fraudulently obtained from the director, interest pursuant to division (A)(3) of this section, and court costs, through attachment proceedings under Chapter 2715. of the Revised Code and garnishment proceedings under Chapter 2716. of the Revised Code.

(B) If the director finds that an applicant for benefits has been credited with a waiting period or paid benefits to which the applicant was not entitled for reasons other than fraudulent misrepresentation, the director shall:

(1)(a) Within six months after the determination under which the claimant was credited with that waiting period or paid benefits becomes final pursuant to section 4141.28 of the Revised Code, or within three years after the end of the benefit year in which such benefits were claimed, whichever is later, by order cancel such waiting period and require that such benefits be repaid to the director or be withheld from any benefits to which such applicant is or may become entitled before any additional benefits are paid, provided that the repayment or withholding shall not be required where the overpayment is the result of the director's correcting a prior decision due to a typographical or clerical error in the director's prior decision, or an error in an employer's report under division (G) of section 4141.28 of the Revised Code.

(b) The limitation specified in division (B)(1)(a) of this section shall not apply to cases involving the retroactive payment of remuneration covering periods for which benefits were previously paid to the claimant. However, in such cases, the director's order requiring repayment shall not be issued

unless the director is notified of such retroactive payment within six months from the date the retroactive payment was made to the claimant.

(2) The director may, by reciprocal agreement with the United States secretary of labor or another state, recover overpayment amounts from unemployment benefits otherwise payable to an individual under Chapter 4141. of the Revised Code. Any overpayments made to the individual that have not previously been recovered under an unemployment benefit program of the United States may be recovered in accordance with section 303(g) of the "Social Security Act" and sections 3304(a)(4) and 3306(f) of the "Federal Unemployment Tax Act," 53 Stat. 183 (1939), 26 U.S.C.A. 3301 to 3311.

(3) If the amounts required to be repaid under division (B) of this section are not recovered within three years from the date the director's order requiring payment became final, initiate no further action to collect such benefits and the amount of any benefits not recovered at that time shall be canceled as uncollectible, provided that the time limit for collection shall be extended by the period of any stay to the collection or by any other time period to which the parties mutually agree.

(C) The appeal provisions of sections 4141.281 and 4141.282 of the Revised Code shall apply to all orders and determinations issued under this section, except that an individual's right of appeal under division (B)(2) of this section shall be limited to this state's authority to recover overpayment of benefits.

(D) If an individual makes a full repayment or a repayment that is less than the full amount required by this section, the director shall apply the repayment to the mutualized account under division (B) of section 4141.25 of the Revised Code, except that the director shall credit the repayment to the accounts of the individual's base period employers that previously have not been credited for the amount of improperly paid benefits charged against their accounts based on the proportion of benefits charged against the accounts as determined pursuant to division (D) of section 4141.24 of the Revised Code.

The director shall deposit any repayment collected under this section that the director determines to be payment of interest or court costs into the unemployment compensation special administrative fund established pursuant to section 4141.11 of the Revised Code.

This division does not apply to federal tax refund offsets under 31 C.F.R. 285.8.

Sec. 4141.50. (A) As used in this section and in sections 4141.51 to 4141.56 of the Revised Code:

(1) "Affected unit" means a department, shift, or other organizational unit of two or more employees that is designated by a participating employer in a shared work plan.

(2) "Approved shared work plan" means an employer's shared work plan, submitted pursuant to section 4141.51 of the Revised Code, that satisfies all of the requirements for approval under that section and that the director of job and family services has approved in writing.

(3) "Intermittent basis" means employment that is not continuous but may consist of periodic intervals of weekly work and intervals of no weekly work.

(4) "Normal weekly hours of work" means the normal hours of work each week for an employee in an affected unit when that unit is operating on a full-time basis, not to exceed forty hours and not including any overtime worked.

(5) "Participating employee" means an employee whose normal weekly hours of work are reduced by the reduction percentage under an approved shared work plan.

(6) "Participating employer" means an employer who has an approved shared work plan in effect.

(7) "Reduction percentage" means the percentage by which each participating employee's normal weekly hours of work are reduced under an approved shared work plan.

(8) "Seasonal basis" has the same meaning as "seasonal employment" as defined in division (A) of section 4141.33 of the Revised Code.

(9) "Shared work compensation" means the pro rata share of unemployment compensation benefits payable to a participating employee under an approved shared work plan. "Shared work compensation" does not include unemployment compensation benefits otherwise payable to an eligible claimant who is totally or partially unemployed.

(10) "Temporary basis" means employment where an employee is expected to remain in a position for only a limited period of time or is hired by a temporary agency to fill a gap in the employer's workforce.

(B) There is hereby created the "SharedWork Ohio" program, under which an employer who participates in the program reduces the number of hours worked by the employees of the employer in lieu of layoffs.

The director may adopt rules as the director determines necessary to implement any guidance issued by the United States secretary of labor with respect to the SharedWork Ohio program.

Sec. 4141.51. (A) An employer who wishes to participate in the SharedWork Ohio program shall submit a plan to the director of job and

family services in which the employer does all of the following:

(1) Identifies the participating employees by name, social security number, affected unit, and normal weekly hours of work;

(2) Describes the manner in which the employer will implement the requirements of the SharedWork Ohio program, including the proposed reduction percentage, which shall be between ten per cent and fifty per cent, and any temporary closure of the participating employer's business for equipment maintenance or other similar circumstances that the employer knows may occur during the effective period of an approved plan;

(3) Includes a plan for giving advance notice, if feasible, to an employee whose normal weekly hours of work are to be reduced and, if advance notice is not feasible, an explanation of why that notice is not feasible;

(4) Includes a certification by the employer that the aggregate reduction in the number of hours worked by the employees of the employer is in lieu of layoffs and includes an estimate of the number of layoffs that would have occurred absent the ability to participate in the SharedWork Ohio program;

(5) Includes a certification by the employer that if the employer provides health benefits and retirement benefits under a defined benefit plan, as defined in 26 U.S.C. 414(j), as amended, or contributions under a defined contribution plan as defined in 26 U.S.C. 414(i), as amended, to any employee whose normal weekly hours of work are reduced under the program that such benefits will continue to be provided to an employee participating in the SharedWork Ohio program under the same terms and conditions as though the normal weekly hours of work of the employee had not been reduced or to the same extent as other employees not participating in the program;

(6) Permits eligible employees to participate, as appropriate, in training to enhance job skills approved by the director, including employer-sponsored training or worker training funded under the federal "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C. 2801 et seq., as amended;

(7) Includes any other information as required by the United States secretary of labor or the director under the rules the director adopts under section 4141.50 of the Revised Code;

(8) Includes an attestation by the employer that the terms of the written plan submitted by the employer and implementation of that plan are consistent with obligations of the employer under the applicable federal and state laws;

(9) Includes a certification by the employer that the employer will promptly notify the director of any change in the business that includes the

sale or transfer of all or part of the business, and that the employer will notify any successor in interest to the employer's business prior to the transfer of all or part of the business, of the existence of any approved shared work plan;

(10) Includes a certification by the employer that, as of the date the employer submits the plan, the employer is current on all reports and has paid all contributions, reimbursements, interest, and penalties due under this chapter;

(11) Includes an assurance from the employer that the employer will remain current on all employer reporting and payments of contributions, reimbursements, interest, and penalties as required by this chapter;

(12) Includes a certification by the employer that none of the participating employees are employed on a seasonal, temporary, or intermittent basis;

(13) Includes an assurance from the employer that the employer will not reduce a participating employee's normal weekly hours of work by more than the reduction percentage, except in the event of a temporary closure of the employer's business for equipment maintenance, or when the employee takes approved time off during the week with pay, and the combined work hours and paid leave hours equal the number of hours the employee would have worked under the plan.

(B) The director shall approve a shared work plan if an employer includes in the plan all of the information, certifications, and assurances required under division (A) of this section.

(C) The director shall approve or deny a shared work plan and shall send a written notice to the employer stating whether the director approved or denied the plan not later than thirty days after the director receives the plan. If the director denies approval of a shared work plan, the director shall state the reasons for denying approval in the written notice sent to the employer.

(D) The director shall enforce the requirements of the SharedWork Ohio program in the same manner as the director enforces the requirements of this chapter, including under section 4141.40 of the Revised Code.

Sec. 4141.52. (A) A shared work plan approved under section 4141.51 of the Revised Code takes effect with respect to the week following the date the director of job and family services approves the plan. An approved shared work plan expires at the end of the fifty-second calendar week after approval of the plan.

(B) A participating employer who wishes to modify an existing approved shared work plan shall submit the modified plan to the director.

The director shall evaluate the modified plan and may approve the plan if the plan meets the requirements for approval under section 4141.51 of the Revised Code. If approved, a modified plan supersedes the previously approved shared work plan, effective beginning with the week following the date the director approves the modified plan. The director shall not approve a modified plan that fails to satisfy the requirements for approval under section 4141.51 of the Revised Code.

(C) The director may terminate an approved shared work plan for good cause. For purposes of this section, "good cause" means any of the following circumstances:

(1) The approved shared work plan is not being executed according to the terms and conditions stated in the plan.

(2) The participating employer fails to comply with any assurances given in the participating employer's approved shared work plan.

(3) The participating employer, or a participating employee of the participating employer, violates any criteria on which approval of the shared work plan was based.

(D) A participating employer may elect to terminate an approved shared work plan by providing written notice to the director. The director shall terminate the plan upon receipt of the notice and shall inform the employer and each participating employee of the employer in writing of the week with respect to which the termination is effective.

(E) A decision by the director to approve or disapprove a proposed shared work plan, to approve or disapprove a proposed modified shared work plan, or to terminate an approved shared work plan, may not be appealed pursuant to this chapter.

(F) Nothing in division (E) of this section shall be construed to prevent an employer who has submitted a shared work plan that was disapproved from submitting another shared work plan in accordance with section 4141.51 of the Revised Code.

Sec. 4141.53. (A) An individual is eligible to receive shared work compensation for a week in which the individual satisfies all of the following:

(1) The individual is employed by a participating employer and is subject to a shared work plan that was approved before that week and is in effect for that week.

(2) The individual is available for work and is actively seeking work by being available for the individual's normal weekly hours of work.

(3) The individual's normal weekly hours of work with the participating employer have been reduced by at least ten per cent but not more than fifty

per cent.

(4) The individual has been employed by an employer or employers subject to this chapter in at least twenty qualifying weeks within the individual's base period and has earned or been paid remuneration at an average weekly wage of not less than twenty-seven and one-half per cent of the statewide average weekly wage for those weeks.

(5) The individual has been subject to a shared work plan for at least one week prior to the week for which the compensation is to be paid, or otherwise satisfies the waiting period requirement of division (B) of section 4141.29 of the Revised Code for the individual's benefit year.

(6) The individual otherwise satisfies the requirements of this chapter and is not otherwise disqualified from receiving unemployment compensation benefits.

(B) For purposes of division (A)(2) of this section, an individual is available for the individual's normal weekly hours of work with the participating employer if the individual does any of the following:

(1) Works the number of weekly hours assigned to the individual under an approved shared work plan;

(2) Works fewer hours than the number of weekly hours assigned to the individual under an approved shared work plan and either of the following apply:

(a) The individual takes approved time off during the week with pay, and the combined work hours and paid leave hours equal the number of hours the employee would have worked under the plan;

(b) The individual does not take approved time off with pay during that week and the reduction in hours was not the fault of the individual and was not more than fifty per cent of the individual's normal weekly hours of work.

(C)(1) Except as provided in division (C)(2) or (D) of this section, the director of job and family services shall pay a participating employee who is eligible for weekly shared work compensation in an amount equal to the participating employee's weekly benefit amount as described in division (B) of section 4141.30 of the Revised Code for a period of total unemployment, multiplied by the reduction percentage specified in the approved shared work plan applicable to the participating employee.

(2) The director shall pay a participating employee who is eligible for weekly shared work compensation in an amount equal to the participating employee's weekly benefit amount as described in division (B) of section 4141.30 of the Revised Code for a period of total unemployment, multiplied by the percentage by which the participating employee's normal weekly hours of work were actually reduced during the workweek, if all of the

following apply:

(a) The participating employee did not take approved paid leave during the week.

(b) The participating employee's normal weekly hours of work were actually reduced by not less than ten per cent and not greater than fifty per cent.

(c) The increase or decrease in the participating employee's hours above or below the number of hours assigned to the employee in the approved shared work plan was not the fault of the employee.

(3) The director shall determine fault for purposes of divisions (B)(2)(b) and (C)(2)(c) of this section in the same manner that the director makes determinations for benefit rights and determines claims for unemployment compensation benefits under sections 4141.28 and 4141.281 of the Revised Code.

(4) The director shall round the amount of a shared work compensation payment that is not a multiple of one dollar to the next lower multiple of one dollar.

(5) No shared work compensation shall be payable during the one-week period described in division (A)(5) of this section.

(D) If an individual works for a participating employer and another employer during the weeks the individual is covered by an approved shared work plan, eligibility for shared work compensation is determined as follows:

(1) If the combined number of hours the individual works for both the participating employer and the other employer in a week exceeds the amount of the individual's normal weekly hours of work reduced by ten per cent, the individual is not eligible for shared work compensation.

(2) If the combined number of hours the individual works in a week for both employers equals the amount of the individual's normal weekly hours of work reduced between ten and fifty per cent, the director shall pay the individual, if the individual is otherwise eligible, shared work compensation in an amount equal to the individual's weekly benefit amount as described in division (B) of section 4141.30 of the Revised Code for a period of total unemployment, multiplied by the percentage by which the individual's normal weekly hours of work were reduced during the week when factoring in both the amount of hours worked for the other employer and the amount of hours worked for the participating employer.

(E) A participating employee is not entitled to receive shared work compensation and unemployment compensation benefits that, when combined, exceed the maximum total benefits payable to the participating

employee in a benefit year under section 4141.30 of the Revised Code. No participating employee shall be paid shared work compensation during the employee's benefit year in an amount that exceeds twenty-six times the amount of the employee's weekly benefit amount for a period of total unemployment under section 4141.30 of the Revised Code.

(F) An individual who has received all of the shared work compensation and unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under section 4141.30 of the Revised Code and is entitled to receive extended benefits under section 4141.301 of the Revised Code if the individual is otherwise eligible to receive benefits under that section.

(G) Except as provided in division (C)(2) of this section, the director shall not pay shared work compensation to an individual for a week during which the individual performs paid work for the individual's participating employer that exceeds or falls below the reduced hours established under an approved shared work plan that covers the individual.

(H)(1) Except as provided in divisions (H)(2) and (3) of this section, a participating employee is not eligible to receive benefits for being partially unemployed for any week during which the individual works as a participating employee.

(2) A participating employee who performs no services during a week for the participating employer and who is otherwise eligible may be paid benefits for being totally or partially unemployed for that week.

(3) A participating employee whose normal weekly hours of work are reduced by more than fifty per cent and who is otherwise eligible may be paid benefits for partial unemployment for that week.

(I) Any payment of total or partial unemployment compensation benefits under this section is not a payment of shared work compensation under an approved plan but shall be calculated against the maximum total benefits payable to the participating employee in a benefit year under section 4141.30 of the Revised Code.

(J) For purposes of this section and unless another benefit year applies to the individual, notwithstanding division (R)(1) of section 4141.01 of the Revised Code, a participating employee's "benefit year" is the fifty-two week period beginning with the first day of that week with respect to which the employee's participating employer first files a claim on behalf of the participating employee pursuant to division (B) of section 4141.54 of the Revised Code.

Sec. 4141.54. (A) Notwithstanding any provision in this chapter to the contrary, a participating employee who satisfies the availability requirement

of division (A)(2) of section 4141.53 of the Revised Code shall not be required to be totally or partially unemployed within the meaning of division (M) or (N) of section 4141.01 of the Revised Code, shall not be required to file a claim for unemployment compensation benefits pursuant to section 4141.28 of the Revised Code, and shall not be required to meet ability to work, availability for work, and work search requirements that would otherwise be applicable to the participating employee, to receive shared work compensation under the SharedWork Ohio program.

(B) The director of job and family services shall establish a schedule of consecutive two-week periods within the effective period of each approved shared work plan for the filing of shared work compensation claims. At the end of each scheduled period, the participating employer, in accordance with procedures prescribed by the director, shall file claims on behalf of the participating employer's participating employees. A participating employee, in accordance with procedures prescribed by the director, shall attest to the hours reported, report any other hours worked for an employer who is not the participating employer, and provide additional information as is requested by the director.

Sec. 4141.55. (A) If the state is eligible for and receives reimbursement for shared work compensation paid under the SharedWork Ohio program from the federal government pursuant to the federal "Layoff Prevention Act of 2012," Pub. L. No. 112-96, 126 Stat. 156, notwithstanding section 4141.24 of the Revised Code and if permitted under that act, during the time period in which the state is fully or partially reimbursed the account of an employer shall not be charged for the portion of any shared work compensation paid to a participating employer's participating employees for which the state receives reimbursement. If the federal government does not provide full reimbursement for shared work compensation paid to an individual under section 4141.53 of the Revised Code, the portion of shared work compensation paid to that individual that is not reimbursed shall be charged in accordance with division (C) of this section.

(B) Beginning with the week for which the federal government no longer provides reimbursement, or if the state does not receive reimbursement or the federal government requires an employer's account to be charged, any shared work compensation paid to an individual shall be charged in accordance with division (C) of this section.

(C) Except as provided in divisions (A) and (B) of this section, any shared work compensation paid to an individual under section 4141.53 of the Revised Code shall be charged in accordance with division (D) of section 4141.24 of the Revised Code.

Sec. 4141.56. Beginning one year after the effective date of this section, and every year thereafter, the director of job and family services shall prepare and submit a report to the governor, the president and minority leader of the senate, and the speaker and the minority leader of the house of representatives that discusses the utilization of the SharedWork Ohio program created under section 4141.50 of the Revised Code. The director shall include in that report the number of employers and employees participating in the program, the amount of shared work compensation paid under the program during the immediately preceding year, and any other information the director considers to be relevant.

SECTION 2. That existing sections 4141.09, 4141.11, 4141.24, and 4141.35 of the Revised Code are hereby repealed.

SECTION 3. The Director of Job and Family Services shall prepare and submit a report evaluating the utilization and effectiveness of the SharedWork Ohio Program created under section 4141.50 of the Revised Code, as enacted by this act, and the impact of the Program on the Unemployment Compensation Fund created in section 4141.09 of the Revised Code. The Director shall base the report upon the information contained in the reports the Director prepares under section 4141.56 of the Revised Code, as enacted by this act. The Director shall submit the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and the Minority Leader of the House of Representatives not later than three years after the effective date of this act.

SECTION 4. The federal "Layoff Prevention Act of 2012," Pub. L. No. 112-96, 126 Stat. 156, permits a state to receive federal funding to create a program under which an employer reduces the hours worked by the employer's employees in lieu of laying off those employees. This act creates the "SharedWork Ohio" program, a program that permits an employer to reduce hours worked by the employer's employees in lieu of laying off those employees and permits those employees to receive a proportionate share of unemployment compensation benefits. The Director of Job and Family Services shall implement "SharedWork Ohio" in accordance with sections 4141.50 to 4141.56 of the Revised Code, as enacted by this act. The Department of Job and Family Services may implement the program as soon as the United States Department of Labor has certified that the "SharedWork

Ohio" program complies with the federal law.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is so that employers can continue to employ Ohioans who would otherwise be victims of total job displacement. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 37

130th G.A.

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

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____