

FIRST REGULAR SESSION

HOUSE BILL NO. 1198

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BERRY.

2271H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 288.032, RSMo, and to enact in lieu thereof nine new sections relating to professional employer organizations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 288.032, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 285.700, 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.750, and 288.032, to read as follows:

285.700. 1. Sections 285.700 to 285.750 shall be known and may be cited as the "Professional Employer Organization Act".

2. The secretary of state or any person designated by the secretary of state may enforce the provisions of sections 285.700 to 285.750.

285.705. As used in sections 285.700 to 285.750, the following terms mean:

(1) "Client", any person who enters into a professional employer agreement with a PEO;

(2) "Coemployer", either a PEO or a client;

(3) "Coemployment relationship", a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and sections 285.700 to 285.750. In such a coemployment relationship:

(a) The PEO is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the PEO by the professional employer agreement or sections 285.700 to 285.750;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

13 **(b) The client is entitled to enforce those rights and obligated to provide and**
14 **perform those employer obligations allocated to such client by the professional employer**
15 **agreement and sections 285.700 to 285.750; and**

16 **(c) The client is entitled to enforce any right and obligated to perform any**
17 **obligation of an employer not specifically allocated to the PEO by the professional**
18 **employer agreement or sections 285.700 to 285.750;**

19 **(4) "Covered employee", an individual having a coemployment relationship with**
20 **a PEO and a client who meets the following criteria:**

21 **(a) The individual has received written notice of coemployment with the PEO; and**

22 **(b) The individual's coemployment relationship is pursuant to a professional**
23 **employer agreement subject to sections 285.700 to 285.750.**

24

25 **Individuals who are officers, directors, shareholders, partners, and managers of the client**
26 **will be covered employees, except to the extent the PEO and the client have expressly**
27 **agreed in the professional employer agreement that such individuals would not be covered**
28 **employees, provided such individuals meet the criteria of this subdivision and act as**
29 **operational managers or perform day-to-day operational services for the client;**

30 **(5) "PEO group", any two or more PEOs that are majority owned or commonly**
31 **controlled by the same entity, parent, or controlling person;**

32 **(6) "Person", any individual, partnership, corporation, limited liability company,**
33 **association, or any other form of legally recognized entity;**

34 **(7) "Professional employer agreement", a written contract by and between a client**
35 **and a PEO that provides:**

36 **(a) For the coemployment of covered employees;**

37 **(b) For the allocation of employer rights and obligations between the client and the**
38 **PEO with respect to the covered employees; and**

39 **(c) That the PEO and the client assume the responsibilities required under sections**
40 **285.700 to 285.750;**

41 **(8) "Professional employer organization" or "PEO", any person engaged in the**
42 **business of providing professional employer services. A person engaged in the business of**
43 **providing professional employer services shall be subject to registration and regulation**
44 **under sections 285.700 to 285.750 regardless of its use of the term or conducting business**
45 **as a professional employer organization, PEO, staff leasing company, registered staff**
46 **leasing company, employee leasing company, administrative employer, or any other name.**
47 **The following shall not be deemed to be professional employer organizations or the**

48 providing of professional employment services for the purposes of sections 285.700 to
49 285.750:

50 (a) Arrangements wherein a person, whose principal business activity is not
51 entering into professional employer arrangements and does not hold itself out as a PEO,
52 shares employees with a commonly owned company within the meaning of Section 414(b)
53 and (c) of the Internal Revenue Code of 1986, as amended;

54 (b) Independent contractor arrangements by which a person assumes responsibility
55 for the product produced or service performed by such person or his or her agents and
56 retains and exercises primary direction and control over the work performed by the
57 individuals whose services are supplied under such arrangements; and

58 (c) Providing temporary help services;

59 (9) "Professional employer services", the service of entering into coemployment
60 relationships under sections 285.700 to 285.750 in which all or a majority of the employees
61 providing services to a client or to a division or work unit of a client are covered
62 employees;

63 (10) "Registrant", a PEO registered under sections 285.700 to 285.750;

64 (11) "Temporary help services", services consisting of a person:

65 (a) Recruiting and hiring its own employees;

66 (b) Finding other organizations that need the services of those employees;

67 (c) Assigning those employees to perform work at or services for the other
68 organizations to support or supplement the other organizations' workforces, or to provide
69 assistance in special work situations including, but not limited to, employee absences, skill
70 shortages, seasonal workloads, or to perform special assignments or projects; and

71 (d) Customarily attempting to reassign the employees to other organizations when
72 they finish each assignment.

285.710. 1. Nothing contained in sections 285.700 to 285.750 or in any professional
2 employer agreement shall affect, modify, or amend any collective bargaining agreement
3 or the rights or obligations of any client, PEO, or covered employee under the federal
4 National Labor Relations Act, the federal Railway Labor Act, or sections 105.500 to
5 105.530.

6 2. Nothing in sections 285.700 to 285.750 or in any professional employer agreement
7 shall:

8 (1) Diminish, abolish, or remove rights of covered employees to a client or
9 obligations of such client to a covered employee existing prior to the effective date of the
10 professional employer agreement;

11 **(2) Affect, modify, or amend any contractual relationship or restrictive covenant**
12 **between a covered employee and any client in effect at the time a professional employer**
13 **agreement becomes effective. A professional employer agreement shall also not prohibit**
14 **or amend any contractual relationship or restrictive covenant that is entered into**
15 **subsequently between a client or a covered employee. A PEO shall have no responsibility**
16 **or liability in connection with, or arising out of, any such existing or new contractual**
17 **relationship or restrictive covenant unless the PEO has specifically agreed otherwise in**
18 **writing; or**

19 **(3) Create any new or additional enforceable right of a covered employee against**
20 **a PEO that is not specifically provided by the professional employer agreement or sections**
21 **285.700 to 285.750.**

22 **3. Nothing contained in sections 285.700 to 285.750 or any professional employer**
23 **agreement shall affect, modify, or amend any state, local, or federal licensing, registration,**
24 **or certification requirement applicable to any client or covered employee.**

25 **4. A covered employee who shall be licensed, registered, or certified according to**
26 **law or regulation is deemed solely an employee of the client for purposes of any such**
27 **license, registration, or certification requirement.**

28 **5. A PEO shall not be deemed to engage in any occupation, trade, profession, or**
29 **other activity that is subject to licensing, registration, or certification requirements, or is**
30 **otherwise regulated by a governmental entity solely by entering into and maintaining a**
31 **coemployment relationship with a covered employee who is subject to such requirements**
32 **or regulation.**

33 **6. A client shall have the sole right of direction and control of the professional or**
34 **licensed activities of covered employees and of the client's business. Such covered**
35 **employees and clients shall remain subject to regulation by the regulatory or governmental**
36 **entity responsible for licensing, registration, or certification of such covered employees or**
37 **clients.**

38 **7. For purposes of determination of tax credits, economic incentives, or other**
39 **benefits provided by this state or other government entity and based on employment,**
40 **covered employees shall be deemed employees solely of the client. A client shall be entitled**
41 **to the benefit of any tax credit, economic incentive, or other benefit arising as the result of**
42 **the employment of covered employees of such client. Notwithstanding that the PEO is the**
43 **W-2 reporting employer, the client shall continue to qualify for such benefit, incentive, or**
44 **credit. If the grant or amount of any such benefit, incentive, or credit is based on the**
45 **number of employees, then each client shall be treated as employing only those covered**
46 **employees coemployed by the client. Covered employees working for other clients of the**

47 PEO shall not be counted. Each PEO shall provide, upon request by a client or an agency
48 or department of this state, employment information reasonably required by any agency
49 or department of this state responsible for administration of any such tax credit, economic
50 incentive, or other benefit that is necessary to support any request, claim, application, or
51 other action by a client seeking any such tax credit, economic incentive, or other benefit.

52 **8. With respect to a bid, contract, purchase order, or agreement entered into with**
53 **the state or a political subdivision of the state, a client company's status or certification as**
54 **a minority business enterprise or a women's business enterprise, as those terms are defined**
55 **in section 37.020, shall not be affected because the client company has entered into an**
56 **agreement with a PEO or uses the services of a PEO.**

285.715. 1. Except as otherwise provided in sections 285.700 to 285.750, no person
2 **shall provide, advertise, or otherwise hold itself out as providing professional employer**
3 **services in this state, unless such person is registered under sections 285.700 to 285.750.**

4 **2. Each applicant for registration under sections 285.700 to 285.750 shall provide**
5 **the secretary of state with the following information:**

6 **(1) The name or names under which the PEO conducts business;**

7 **(2) The address of the principal place of business of the PEO and the address of**
8 **each office it maintains in the state;**

9 **(3) The PEO's taxpayer or employer identification number;**

10 **(4) A list by jurisdiction of each name under which the PEO has operated in the**
11 **preceding five years, including any alternative names, names of predecessors, and, if**
12 **known, successor business entities;**

13 **(5) A statement of ownership, which shall include the name and evidence of the**
14 **business experience of any person that, individually or acting in concert with one or more**
15 **other persons, owns or controls, directly or indirectly, twenty-five percent or more of the**
16 **equity interests of the PEO;**

17 **(6) A statement of management, which shall include the name and evidence of the**
18 **business experience of any person who serves as president, chief executive officer, or**
19 **otherwise has the authority to act as senior executive officer of the PEO; and**

20 **(7) A financial statement setting forth the financial condition of the PEO or PEO**
21 **group. At the time of application for a new license, the applicant shall submit the most**
22 **recent audit of the applicant, which shall not be older than thirteen months. Thereafter,**
23 **a PEO or PEO group shall file on an annual basis, within one hundred eighty days after**
24 **the end of the PEO's or PEO group's fiscal year, a succeeding audit. An applicant may**
25 **apply for an extension with the secretary of state, but any such request shall be**
26 **accompanied by a letter from the auditors stating the reasons for the delay and the**

27 anticipated audit completion date. The financial statement shall be prepared in accordance
28 with generally accepted accounting principles and audited by an independent certified
29 public accountant licensed to practice in the jurisdiction in which such accountant is
30 located and shall be without qualification as to the going concern status of the PEO. A
31 PEO or PEO group may submit combined or consolidated audited financial statements to
32 meet the requirements of this section. A PEO that has not had sufficient operating history
33 to have audited financials based upon at least twelve months of operating history shall meet
34 the financial capacity requirements of sections 285.700 to 285.750 and present financial
35 statements reviewed by a certified public accountant.

36 3. (1) Each PEO operating within this state as of the effective date of sections
37 285.700 to 285.750 shall complete its initial registration not later than one hundred eighty
38 days after the effective date of sections 285.700 to 285.750. Such initial registration shall
39 be valid until one hundred eighty days from the end of the PEO's first fiscal year that is
40 more than one year after the effective date of sections 285.700 to 285.750.

41 (2) Each PEO not operating within this state as of the effective date of sections
42 285.700 to 285.750 shall complete its initial registration prior to initiating operations within
43 this state. In the event a PEO not registered in this state becomes aware that an existing
44 client not based in this state has employees and operations in this state, the PEO shall
45 either decline to provide PEO services for those employees or notify the secretary of state
46 within five business days of its knowledge of this fact and file a limited registration
47 application under subsection 6 of this section or a full business registration if there are
48 more than fifty covered employees. The secretary of state may issue an interim operating
49 permit for the period the registration applications are pending if the PEO is currently
50 registered or licensed by another state and the secretary of state determines it to be in the
51 best interest of the potential covered employees.

52 4. Within one hundred eighty days after the end of a registration's fiscal year, such
53 registrant shall renew its registration by notifying the secretary of state of any changes in
54 the information provided in such registrant's most recent registration or renewal. A
55 registrant's existing registration shall remain in effect during the pendency of a renewal
56 application.

57 5. PEOs in a PEO group may satisfy the reporting and financial requirements of
58 sections 285.700 to 285.750 on a combined or consolidated basis, provided that each
59 member of the PEO group guarantees the financial capacity obligations under sections
60 285.700 to 285.750 of each other member of the PEO group. In the case of a PEO or PEO
61 group that submits a combined or consolidated audited financial statement including
62 entities that are not PEOs or that are not in the PEO group, the controlling entity of the

63 PEO group under the consolidated or combined statement shall guarantee the obligations
64 of the PEOs in the PEO group.

65 6. (1) A PEO is eligible for a limited registration under sections 285.700 to 285.750
66 if such PEO:

67 (a) Submits a properly executed request for limited registration on a form provided
68 by the secretary of state;

69 (b) Is domiciled outside this state and is licensed or registered as a professional
70 employer organization in another state;

71 (c) Does not maintain an office in this state or directly solicit clients located or
72 domiciled within this state; and

73 (d) Does not have more than fifty covered employees employed or domiciled in this
74 state on any given day.

75 (2) A limited registration is valid for one year, and may be renewed.

76 (3) A PEO seeking limited registration under this section shall provide the secretary
77 of state with information and documentation necessary to show that the PEO qualifies for
78 a limited registration.

79 (4) The provisions of section 285.725 shall not apply to applicants for limited
80 registration.

81 7. The secretary of state shall maintain a list of professional employer organizations
82 registered under sections 285.700 to 285.750 that is readily available to the public by
83 electronic or other means.

84 8. The secretary of state may produce forms necessary to promote the efficient
85 administration of this section.

86 9. The secretary of state shall, to the extent practical, permit the acceptance of
87 electronic filings in conformance with sections 432.200 to 432.295, including applications,
88 documents, reports, and other filings required by sections 285.700 to 285.750. The
89 secretary of state may provide for the acceptance of electronic filings and other assurance
90 by an independent and qualified assurance organization approved by the secretary of state
91 that provides satisfactory assurance of compliance acceptable to the secretary of state
92 consistent with or in lieu of the requirements of sections 285.715 and 285.725 and other
93 requirements of sections 285.700 to 285.750. The secretary of state shall permit a PEO to
94 authorize such an approved assurance organization to act on the PEO's behalf in
95 complying with the registration requirements of sections 285.700 to 285.750, including
96 electronic filings of information and payment of registration fees. Use of such an approved
97 assurance organization shall be optional and not mandatory for a registrant. Nothing in
98 this subsection shall limit or change the secretary's authority to register or terminate

99 registration of a professional employer organization or to investigate or enforce any
100 provision of sections 285.700 to 285.750.

101 **10. All records, reports, and other information obtained from a PEO under sections**
102 **285.700 to 285.750, except to the extent necessary for the proper administration of sections**
103 **285.700 to 285.750 by the secretary of state, shall be confidential and shall not be**
104 **considered a "public record" as that term is defined in section 610.010.**

285.720. 1. Upon filing an initial registration statement under sections 285.700 to
2 **285.750, a PEO shall pay an initial registration fee not to exceed five hundred dollars.**

3 **2. Upon each annual renewal of a registration statement filed under sections**
4 **285.700 to 285.750, a PEO shall pay a renewal fee not to exceed two hundred fifty dollars.**

5 **3. The secretary of state shall determine any fee to be charged for a group**
6 **registration.**

7 **4. Each PEO seeking limited registration shall pay a fee in the amount not to exceed**
8 **two hundred fifty dollars upon initial application for limited registration and upon each**
9 **renewal of such limited registration.**

10 **5. A PEO seeking registration under section 285.715 shall pay an initial and annual**
11 **fee not to exceed two hundred fifty dollars.**

12 **6. No fee charged under sections 285.700 to 285.750 shall exceed the amount**
13 **reasonably necessary for the administration of sections 285.700 to 285.750.**

285.725. Except as provided by 285.715, each PEO or collectively each PEO group
2 **shall maintain either:**

3 **(1) Positive working capital as defined by generally accepted accounting principles**
4 **at registration as reflected in the financial statements submitted to the secretary of state**
5 **with the initial registration and each annual renewal; or**

6 **(2) A PEO or PEO group that does not have positive working capital may provide**
7 **a bond, irrevocable letter of credit, or securities with a minimum market value equaling**
8 **the deficiency plus one hundred thousand dollars to the secretary of state.**

9 **Such bond is to be held by a depository designated by the secretary securing payment by**
10 **the PEO of all taxes, wages, benefits, or other entitlement due to or with respect to covered**
11 **employees if the PEO does not make such payments when due.**

285.730. 1. Except as specifically provided in sections 285.700 to 285.750 or in the
2 **professional employer agreement, in each coemployment relationship:**

3 **(1) The client shall be entitled to exercise all rights, and shall be obligated to**
4 **perform all duties and responsibilities otherwise applicable to an employer in an**
5 **employment relationship;**

6 **(2) The PEO shall be entitled to exercise only those rights and obligated to perform**
7 **only those duties and responsibilities specifically required under sections 285.700 to**
8 **285.750 or set forth in the professional employer agreement. The rights, duties, and**
9 **obligations of the PEO as coemployer with respect to any covered employee shall be limited**
10 **to those arising pursuant to the professional employer agreement and sections 285.700 to**
11 **285.750 during the term of coemployment by the PEO of such covered employee; and**

12 **(3) Unless otherwise expressly agreed by the PEO and the client in a professional**
13 **employer agreement, the client retains the exclusive right to direct and control the covered**
14 **employees as is necessary to conduct the client's business, to discharge any of the client's**
15 **fiduciary responsibilities, or to comply with any licensure requirements applicable to the**
16 **client or to the covered employees.**

17 **2. Except as specifically provided under sections 285.700 to 285.750, the**
18 **coemployment relationship between the client and the PEO and between each coemployer**
19 **and each covered employee shall be governed by the professional employer agreement.**
20 **Each professional employer agreement shall include the following:**

21 **(1) The allocation of rights, duties, and obligations as described in subsection 1 of**
22 **this section;**

23 **(2) A requirement that the PEO shall have responsibility to:**

24 **(a) Pay wages to covered employees;**

25 **(b) Withhold, collect, report, and remit payroll-related and unemployment taxes;**
26 **and**

27 **(c) To the extent the PEO has assumed responsibility in the professional employer**
28 **agreement, to make payments for employee benefits for covered employees.**

29

30 **As used in this section, the term "wages" does not include any obligation between a client**
31 **and a covered employee for payments beyond or in addition to the covered employee's**
32 **salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred**
33 **compensation, profit sharing, vacation, sick, or other paid-time off pay, unless the PEO has**
34 **expressly agreed to assume liability for such payments in the professional employer**
35 **agreement; and**

36 **(3) A requirement that the PEO shall have a right to hire, discipline, and terminate**
37 **a covered employee as may be necessary to fulfill the PEO's responsibilities under sections**
38 **285.700 to 285.750 and the professional employer agreement. The client shall have a right**
39 **to hire, discipline, and terminate a covered employee.**

40 **3. With respect to each professional employer agreement entered into by a PEO,**
41 **such PEO shall provide written notice to each covered employee affected by such**

42 agreement of the general nature of the coemployment relationship between and among the
43 PEO, the client, and such covered employee.

44 **4. Except to the extent otherwise expressly provided by the applicable professional**
45 **employer agreement:**

46 **(1) A client shall be solely responsible for the quality, adequacy, or safety of the**
47 **goods or services produced or sold in the client's business;**

48 **(2) A client shall be solely responsible for directing, supervising, training, and**
49 **controlling the work of the covered employees with respect to the business activities of the**
50 **client and solely responsible for the acts, errors, or omissions of the covered employees with**
51 **regard to such activities;**

52 **(3) A client shall not be liable for the acts, errors, or omissions of a PEO or of any**
53 **covered employee of the client and a PEO if such covered employee is acting under the**
54 **express direction and control of the PEO;**

55 **(4) A PEO shall not be liable for the acts, errors, or omissions of a client or of any**
56 **covered employee of the client if such covered employee is acting under the express**
57 **direction and control of the client;**

58 **(5) Nothing in this subsection shall serve to limit any contractual liability or**
59 **obligation specifically provided in the written professional employer agreement; and**

60 **(6) A covered employee is not, solely as the result of being a covered employee of**
61 **a PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds,**
62 **surety bonds, employer's liability that is not covered by workers' compensation, or liquor**
63 **liability insurance carried by the PEO unless the covered employees are included by**
64 **specific reference in the professional employer agreement and applicable prearranged**
65 **employment contract, insurance contract, or bond.**

66 **5. A PEO under sections 285.700 to 285.750 is not engaged in the sale of insurance**
67 **or in acting as a third party administrator by offering, marketing, selling, administering,**
68 **or providing professional employer services that include services and employee benefit**
69 **plans for covered employees.**

70 **6. For purposes of this state or any county, municipality, or other political**
71 **subdivision thereof:**

72 **(1) Any tax or assessment imposed upon professional employer services or any**
73 **business license or other fee that is based upon "gross receipts" shall allow a deduction**
74 **from the gross income or receipts of the business derived from performing professional**
75 **employer services that is equal to that portion of the fee charged to a client that represents**
76 **the actual cost of wages and salaries, benefits, payroll taxes, withholding, or other**

77 assessments paid to or on behalf of a covered employee by the professional employer
78 organization under a professional employer agreement;

79 (2) Any tax assessed or assessment or mandated expenditure on a per capita or per
80 employee basis shall be assessed against the client for covered employees and against the
81 professional employer organization for its employees who are not covered employees
82 coemployed with a client. Benefits or monetary consideration that meet the requirements
83 of mandates imposed on a client and that are received by covered employees through the
84 PEO either through payroll or through benefit plans sponsored by the PEO shall be
85 credited against the client's obligation to fulfill such mandates; and

86 (3) In the case of a tax or an assessment imposed or calculated upon the basis of
87 total payroll, the professional employer organization shall be eligible to apply any small
88 business allowance or exemption available to the client for the covered employees for
89 purposes of computing the tax.

285.750. 1. A person shall not knowingly:

2 (1) Offer or provide professional employer services or use the names PEO,
3 professional employer organization, staff leasing, employee leasing, administrative
4 employer, or other title representing professional employer services without first becoming
5 registered under sections 285.700 to 285.750; or

6 (2) Provide false or fraudulent information to the secretary of state in conjunction
7 with any registration, renewal, or in any report required under sections 285.700 to 285.750.

8 2. Disciplinary action may be taken by the secretary of state for violation of this
9 section for:

10 (1) The conviction of a professional employer organization or a controlling person
11 of a PEO of a crime that relates to the operation of a PEO or the ability of the licensee or
12 a controlling person of a licensee to operate a PEO;

13 (2) Knowingly making a material misrepresentation to the secretary of state or
14 other governmental agency; or

15 (3) A willful violation of sections 285.700 to 285.750 or any order issued by the
16 secretary of state under sections 285.700 to 285.750.

17 3. Upon finding, after notice and opportunity for hearing, that a PEO, a controlling
18 person of a PEO, or a person offering PEO services has violated one or more provisions
19 of this section and subject to appeal, the secretary of state may:

20 (1) Deny an application for a license;

21 (2) Revoke, restrict, or refuse to renew a license;

22 (3) Impose an administrative penalty in an amount not to exceed one thousand
23 dollars for each material violation;

24 **(4) Place the licensee on probation for the period and subject to conditions that the**
25 **secretary of state specifies; or**

26 **(5) Issue a cease and desist order.**

288.032. 1. After December 31, 1977, "employer" means:

2 (1) Any employing unit which in any calendar quarter in either the current or preceding
3 calendar year paid for service in employment wages of one thousand five hundred dollars or
4 more except that for the purposes of this definition, wages paid for "agricultural labor" as defined
5 in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic
6 services" as defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not
7 be considered;

8 (2) Any employing unit which for some portion of a day in each of twenty different
9 calendar weeks, whether or not such weeks were consecutive, in either the current or the
10 preceding calendar year, had in employment at least one individual (irrespective of whether the
11 same individual was in employment in each such day); except that for the purposes of this
12 definition, services performed in "agricultural labor" as defined in paragraph (a) of subdivision
13 (1) of subsection 12 of section 288.034 and in "domestic services" as defined in subdivisions (2)
14 and (13) of subsection 12 of section 288.034 shall not be considered;

15 (3) Any governmental entity for which service in employment as defined in subsection
16 7 of section 288.034 is performed;

17 (4) Any employing unit for which service in employment as defined in subsection 8 of
18 section 288.034 is performed during the current or preceding calendar year;

19 (5) Any employing unit for which service in employment as defined in paragraph (b) of
20 subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding
21 calendar year;

22 (6) Any employing unit for which service in employment as defined in subsection 13 of
23 section 288.034 is performed during the current or preceding calendar year;

24 (7) Any individual, type of organization or employing unit which has been determined
25 to be a successor pursuant to section 288.110;

26 (8) Any individual, type of organization or employing unit which has elected to become
27 subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

28 (9) Any individual, type of organization or employing unit which, having become an
29 employer, has not pursuant to section 288.080 ceased to be an employer;

30 (10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a
31 condition for approval of this law for full tax credit against the tax imposed by the Federal
32 Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

33 2. (1) Notwithstanding any other provisions of this law, any employer, individual,
34 organization, partnership, corporation, other legal entity or employing unit that meets the
35 definition of lessor employing unit, as defined in subdivision (5) of this subsection, shall be
36 liable for contributions on wages paid by the lessor employing unit to individuals performing
37 services for client lessees of the lessor employing unit. Unless the lessor employing unit has
38 timely complied with the provisions of subdivision (3) of this subsection, any employer,
39 individual, organization, partnership, corporation, other legal entity or employing unit which is
40 leasing individuals from any lessor employing unit shall be jointly and severally liable for any
41 unpaid contributions, interest and penalties due pursuant to this law from any lessor employing
42 unit attributable to wages for services performed for the client lessee entity by individuals leased
43 to the client lessee entity, and the lessor employing unit shall keep separate records and submit
44 separate quarterly contribution and wage reports for each of its client lessee entities. Delinquent
45 contributions, interest and penalties shall be collected in accordance with the provisions of this
46 chapter.

47 (2) Notwithstanding the provisions of subdivision (1) of this subsection, any
48 governmental entity or nonprofit organization that meets the definition of lessor employing unit,
49 as defined in subdivision (5) of this subsection, and has elected to become liable for payments
50 in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the division
51 payments in lieu of contributions, interest, penalties and surcharges in accordance with section
52 288.090 on benefits paid to individuals performing services for the client lessees of the lessor
53 employing unit. If the lessor employing unit has not timely complied with the provisions of
54 subdivision (3) of this subsection, any client lessees with services attributable to and performed
55 for the client lessees shall be jointly and severally liable for any unpaid payments in lieu of
56 contributions, interest, penalties and surcharges due pursuant to this law. The lessor employing
57 unit shall keep separate records and submit separate quarterly contribution and wage reports for
58 each of its client lessees. Delinquent payments in lieu of contributions, interest, penalties and
59 surcharges shall be collected in accordance with subsection 3 of section 288.090. The election
60 to be liable for payments in lieu of contributions made by a governmental entity or nonprofit
61 organization meeting the definition of lessor employing unit may be terminated by the division
62 in accordance with subsection 3 of section 288.090.

63 (3) In order to relieve a client lessees from joint and several liability and the separate
64 reporting requirements imposed pursuant to this subsection, any lessor employing unit may post
65 and maintain a surety bond issued by a corporate surety authorized to do business in Missouri
66 in an amount equivalent to the contributions or payments in lieu of contributions for which the
67 lessor employing unit was liable in the last calendar year in which he or she accrued
68 contributions or payments in lieu of contributions, or one hundred thousand dollars, whichever

69 amount is the greater, to ensure prompt payment of contributions or payments in lieu of
70 contributions, interest, penalties and surcharges for which the lessor employing unit may be, or
71 becomes, liable pursuant to this law. In lieu of a surety bond, the lessor employing unit may
72 deposit in a depository designated by the director, securities with marketable value equivalent
73 to the amount required for a surety bond. The securities so deposited shall include authorization
74 to the director to sell any securities in an amount sufficient to pay any contributions or payments
75 in lieu of contributions, interest, penalties and surcharges which the lessor employing unit fails
76 to promptly pay when due. In lieu of a surety bond or securities as described in this subdivision,
77 any lessor employing unit may provide the director with an irrevocable letter of credit, as defined
78 in section 409.5-103, issued by any state or federally chartered financial institution, in an amount
79 equivalent to the amount required for a surety bond as described in this subdivision. In lieu of
80 a surety bond, securities or an irrevocable letter of credit, a lessor employing unit may obtain a
81 certificate of deposit issued by any state or federally chartered financial institution, in an amount
82 equivalent to the amount required for a surety bond as described in this subdivision. The
83 certificate of deposit shall be pledged to the director until release by the director. As used in this
84 subdivision, the term "certificate of deposit" means a certificate representing any deposit of funds
85 in a state or federally chartered financial institution for a specified period of time which earns
86 interest at a fixed or variable rate, where such funds cannot be withdrawn prior to a specified
87 time without forfeiture of some or all of the earned interest.

88 (4) Any lessor employing unit which is currently engaged in the business of leasing
89 individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection
90 by September 28, 1992. Lessor employing units not currently engaged in the business of leasing
91 individuals to client lessees shall comply with subdivision (3) of this subsection before entering
92 into a written lease agreement with client lessees.

93 (5) As used in this subsection, the term "lessor employing unit" means [~~an independently~~
94 ~~established business entity,~~] **a registered professional employer organization as defined**
95 **under subdivision (10) of section 285.705 or a governmental entity as defined in subsection**
96 **1 of section 288.030 or nonprofit organization as defined in subsection 3 of section 288.090**
97 which, pursuant to a written lease agreement between the lessor employing unit and the client
98 lessees, engages in the business of providing individuals to any other employer, individual,
99 organization, partnership, corporation, other legal entity or employing unit referred to in this
100 subsection as a client lessee.

101 (6) The provisions of this subsection shall not be applicable to private employment
102 agencies who provide their employees to employers on a temporary help basis provided the
103 private employment agencies are liable as employers for the payment of contributions on wages
104 paid to temporary workers so employed.

105 3. After September 30, 1986, notwithstanding any provision of section 288.034, for the
106 purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri
107 division of motor carrier and railroad safety or whose operations are confined to a commercial
108 zone be determined to be the employer of a lessor as defined in 49 CFR Section 376.2(f), or of
109 a driver receiving remuneration from a lessor as defined in 49 CFR Section 376.2(f), provided,
110 however, the term "for-hire motor carrier" shall in no event include an organization described
111 in Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

112 4. The owner or operator of a beauty salon or similar establishment shall not be
113 determined to be the employer of a person who utilizes the facilities of the owner or operator but
114 who receives neither salary, wages or other compensation from the owner or operator and who
115 pays the owner or operator rent or other payments for the use of the facilities.

116 5. For purposes of this chapter, a taxicab driver shall not be considered to be an
117 employee of the company that leases the taxicab to the driver or that provides dispatching or
118 similar rider referral services unless the driver is shown to be an employee of that company by
119 application of the Internal Revenue Service twenty-factor right-to-control test.

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