

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 666

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Offered March 26, 2018.

Senate Substitute adopted, March 26, 2018.

Taken up for Perfection March 26, 2018. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

4250S.04P

AN ACT

To amend chapter 285, RSMo, by adding thereto ten new sections relating to the regulation of the tri-party employment relationship, with penalty provisions.

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

Section A. Chapter 285, RSMo, is amended by adding thereto ten new sections, to be known as sections 285.075, 285.700, 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.740, and 285.750, to read as follows:

285.075. 1. Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee or a franchisor, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose, unless the franchisor exercises direct and immediate control over the franchisee. Such control shall be found only when the franchisor exercises direct and immediate control over the hiring, termination, discipline, and direction of the franchisee's employees.

2. For purposes of this section, the terms "franchisee" and "franchisor" shall have the same meaning as in 16 C.F.R. 436.1.

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

2 terms mean:

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

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

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

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

16 (b) The client is entitled to enforce those rights and obligated to
17 provide and perform those employer obligations allocated to such client
18 by the professional employer agreement and sections 285.700 to 285.750;
19 and

20 (c) The client is entitled to enforce any right and obligated to
21 perform any obligation of an employer not specifically allocated to the
22 PEO by the professional employer agreement or sections 285.700 to
23 285.750;

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

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

28 (b) The individual's coemployment relationship is pursuant to a
29 professional employer agreement subject to sections 285.700 to 285.750.
30 Individuals who are officers, directors, shareholders, partners, and
31 managers of the client will be covered employees, except to the extent
32 the PEO and the client have expressly agreed in the professional
33 employer agreement that such individuals would not be covered
34 employees, provided such individuals meet the criteria of this
35 subdivision and act as operational managers or perform day-to-day
36 operational services for the client;

37 (5) "PEO group", any two or more PEOs that are majority owned
38 or commonly controlled by the same entity, parent, or controlling

39 **person;**

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

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

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

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

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

50 **(8) "Professional employer organization" or "PEO", any person**
51 **engaged in the business of providing professional employer services. A**
52 **person engaged in the business of providing professional employer**
53 **services shall be subject to registration and regulation under sections**
54 **285.700 to 285.750 regardless of its use of the term or conducting**
55 **business as a professional employer organization, staff leasing**
56 **company, registered staff leasing company, employee leasing company,**
57 **administrative employer, or any other name. The following shall not**
58 **be deemed to be professional employer organizations or the providing**
59 **of professional employment services for the purposes of sections**
60 **285.700 to 285.750:**

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

66 **(b) Independent contractor arrangements by which a person**
67 **assumes responsibility for the product produced or service performed**
68 **by such person or his or her agents and retains and exercises primary**
69 **direction and control over the work performed by the individuals**
70 **whose services are supplied under such arrangements; and**

71 **(c) Providing temporary help services;**

72 **(9) "Professional employer services", the service of entering into**
73 **coemployment relationships under sections 285.700 to 285.750 in which**
74 **all or a majority of the employees providing services to a client or to**
75 **a division or work unit of a client are covered employees;**

76 **(10) "Registrant", a PEO registered under sections 285.700 to**
77 **285.750;**

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

79 **(a) Recruiting and hiring its own employees;**

80 **(b) Finding other organizations that need the services of those**
81 **employees;**

82 **(c) Assigning those employees to perform work at or services for**
83 **the other organizations to support or supplement the other**
84 **organizations' workforces, or to provide assistance in special work**
85 **situations including, but not limited to, employee absences, skill**
86 **shortages, seasonal workloads, or to perform special assignments or**
87 **projects; and**

88 **(d) Customarily attempting to reassign the employees to other**
89 **organizations when they finish each assignment.**

285.710. 1. Nothing contained in sections 285.700 to 285.750 or in
2 **any professional employer agreement shall affect, modify, or amend any**
3 **collective bargaining agreement or the rights or obligations of any**
4 **client, PEO, or covered employee under the federal National Labor**
5 **Relations Act, the federal Railway Labor Act, or sections 105.500 to**
6 **105.530.**

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

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

12 **(2) Affect, modify, or amend any contractual relationship or**
13 **restrictive covenant between a covered employee and any client in**
14 **effect at the time a professional employer agreement becomes effective.**

15 **A professional employer agreement shall also not prohibit or amend**
16 **any contractual relationship or restrictive covenant that is entered into**
17 **subsequently between a client or a covered employee. A PEO shall have**
18 **no responsibility or liability in connection with, or arising out of, any**
19 **such existing or new contractual relationship or restrictive covenant**
20 **unless the PEO has specifically agreed otherwise in writing; or**

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

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

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

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

38 **6. A client shall have the sole right of direction and control of**
39 **the professional or licensed activities of covered employees and of the**
40 **client's business. Such covered employees and clients shall remain**
41 **subject to regulation by the regulatory or governmental entity**
42 **responsible for licensing, registration, or certification of such covered**
43 **employees or clients.**

44 **7. For purposes of the determination of tax credits, economic**
45 **incentives, or other benefits provided by this state or any other**
46 **government entity and based on employment, covered employees shall**
47 **be deemed employees solely of the client. A client shall be entitled to**
48 **the benefit of any tax credit, economic incentive, or other benefit**
49 **arising as the result of the employment of covered employees of such**
50 **client. Notwithstanding that the PEO is the W-2 reporting employer,**
51 **the client shall continue to qualify for such benefit, incentive, or credit.**
52 **If the grant or amount of any such benefit, incentive, or credit is based**
53 **on the number of employees, then each client shall be treated as**
54 **employing only those covered employees coemployed by the**
55 **client. Covered employees working for other clients of the PEO shall**
56 **not be counted. Each PEO shall provide, upon request by a client or an**
57 **agency or department of this state, employment information reasonably**
58 **required by any agency or department of this state responsible for**
59 **administration of any such tax credit, economic incentive, or other**
60 **benefit that is necessary to support any request, claim, application, or**

61 other action by a client seeking any such tax credit, economic
62 incentive, or other benefit.

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

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

5 2. Each applicant for registration under sections 285.700 to
6 285.750 shall provide the secretary of state with the following
7 information:

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

9 (2) The address of the principal place of business of the PEO and
10 the address of each office it maintains in this state;

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

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

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

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

24 (7) A financial statement setting forth the financial condition of
25 the PEO or PEO group. At the time of application for a new license, the
26 applicant shall submit the most recent audit of the applicant, which
27 shall not be older than thirteen months. Thereafter, a PEO or PEO
28 group shall file on an annual basis, within one hundred eighty days
29 after the end of the PEO's or PEO group's fiscal year, a succeeding

30 audit. An applicant may apply for an extension with the secretary of
31 state, but any such request shall be accompanied by a letter from the
32 auditors stating the reasons for the delay and the anticipated audit
33 completion date. The financial statement shall be prepared in
34 accordance with generally accepted accounting principles and audited
35 by an independent certified public accountant licensed to practice in
36 the jurisdiction in which such accountant is located and shall be
37 without qualification as to the going concern status of the PEO. A PEO
38 or PEO group may submit combined or consolidated audited financial
39 statements to meet the requirements of this section. A PEO that has
40 not had sufficient operating history to have audited financials based
41 upon at least twelve months of operating history shall meet the
42 financial capacity requirements of sections 285.700 to 285.750 and
43 present financial statements reviewed by a certified public accountant.

44 3. (1) Each PEO operating within this state as of the effective
45 date of sections 285.700 to 285.750 shall complete its initial registration
46 not later than one hundred eighty days after the effective date of
47 sections 285.700 to 285.750. Such initial registration shall be valid until
48 one hundred eighty days from the end of the PEO's first fiscal year that
49 is more than one year after the effective date of sections 285.700 to
50 285.750.

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

65 4. Within one hundred eighty days after the end of a
66 registration's fiscal year, such registrant shall renew its registration by

67 notifying the secretary of state of any changes in the information
68 provided in such registration's most recent registration or renewal. A
69 registrant's existing registration shall remain in effect during the
70 pendency of a renewal application.

71 5. PEOs in a PEO group may satisfy the reporting and financial
72 requirements of sections 285.700 to 285.750 on a combined or
73 consolidated basis, provided that each member of the PEO group
74 guarantees the financial capacity obligations under sections 285.700 to
75 285.750 of each other member of the PEO group. In the case of a PEO
76 or PEO group that submits a combined or consolidated audited
77 financial statement including entities that are not PEOs or that are not
78 in the PEO group, the controlling entity of the PEO group under the
79 consolidated or combined statement shall guarantee the obligations of
80 the PEOs in the PEO group.

81 6. (1) A PEO is eligible for a limited registration under sections
82 285.700 to 285.750 if such PEO:

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

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

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

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

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

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

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

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

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

103 9. The secretary of state shall, to the extent practical, permit the

104 acceptance of electronic filings in conformance with sections 432.200
105 to 432.295, including applications, documents, reports, and other filings
106 required by sections 285.700 to 285.750. The secretary of state may
107 provide for the acceptance of electronic filings and other assurance by
108 an independent and qualified assurance organization approved by the
109 secretary of state that provides satisfactory assurance of compliance
110 acceptable to the secretary of state consistent with or in lieu of the
111 requirements of sections 285.715 and 285.725 and other requirements
112 of sections 285.700 to 285.750. The secretary of state shall permit a PEO
113 to authorize such an approved assurance organization to act on the
114 PEO's behalf in complying with the registration requirements of
115 sections 285.700 to 285.750, including electronic filings of information
116 and payment of registration fees. Use of such an approved assurance
117 organization shall be optional and not mandatory for a
118 registrant. Nothing in this subsection shall limit or change the
119 secretary of state's authority to register or terminate registration of a
120 professional employer organization or to investigate or enforce any
121 provision of sections 285.700 to 285.750.

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

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

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

7 3. The secretary of state shall determine any fee to be charged
8 for a group registration.

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

13 5. No fee charged under sections 285.700 to 285.750 shall exceed
14 the amount reasonably necessary for the administration of sections

15 285.700 to 285.750.

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

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

7 (2) A PEO or PEO group that does not have positive working
8 capital may provide a bond, irrevocable letter of credit, or securities
9 with a minimum market value equaling the deficiency plus one
10 hundred thousand dollars to the secretary of state. Such bond is to be
11 held by a depository designated by the secretary of state securing
12 payment by the PEO of all taxes, wages, benefits, or other entitlement
13 due to or with respect to covered employees if the PEO does not make
14 such payments when due.

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

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

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

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

21 2. Except as specifically provided under sections 285.700 to
22 285.750, the coemployment relationship between the client and the PEO

23 and between each coemployer and each covered employee shall be
24 governed by the professional employer agreement. Each professional
25 employer agreement shall include the following:

26 (1) The allocation of rights, duties, and obligations as described
27 in subsection 1 of this section;

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

29 (a) Pay wages to covered employees;

30 (b) Withhold, collect, report, and remit payroll-related and
31 unemployment taxes; and

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

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

42 (3) A requirement that the PEO shall have a right to hire,
43 discipline, and terminate a covered employee as may be necessary to
44 fulfill the PEO's responsibilities under sections 285.700 to 285.750 and
45 the professional employer agreement. The client shall have a right to
46 hire, discipline, and terminate a covered employee.

47 3. With respect to each professional employer agreement entered
48 into by a PEO, such PEO shall provide written notice to each covered
49 employee affected by such agreement of the general nature of the
50 coemployment relationship between and among the PEO, the client, and
51 such covered employee.

52 4. Except to the extent otherwise expressly provided by the
53 applicable professional employer agreement:

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

57 (2) A client shall be solely responsible for directing, supervising,
58 training, and controlling the work of the covered employees with
59 respect to the business activities of the client and solely responsible for

60 the acts, errors, or omissions of the covered employees with regard to
61 such activities;

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

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

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

73 (6) A covered employee is not, solely as the result of being a
74 covered employee of a PEO, an employee of the PEO for purposes of
75 general liability insurance, fidelity bonds, surety bonds, employer's
76 liability that is not covered by workers' compensation, or liquor
77 liability insurance carried by the PEO unless the covered employees
78 are included by specific reference in the professional employer
79 agreement and applicable prearranged employment contract, insurance
80 contract, or bond.

81 5. A PEO under sections 285.700 to 285.750 is not engaged in the
82 sale of insurance or in acting as a third party administrator by
83 offering, marketing, selling, administering, or providing professional
84 employer services that include services and employee benefit plans for
85 covered employees. The provisions of this section shall not supercede
86 or preempt any requirements under section 375.014.

87 6. For purposes of this state or any county, municipality, or
88 other political subdivision thereof:

89 (1) Any tax or assessment imposed upon professional employer
90 services or any business license or other fee that is based upon "gross
91 receipts" shall allow a deduction from the gross income or receipts of
92 the business derived from performing professional employer services
93 that is equal to that portion of the fee charged to a client that
94 represents the actual cost of wages and salaries, benefits, payroll taxes,
95 withholding, or other assessments paid to or on behalf of a covered
96 employee by the professional employer organization under a

97 professional employer agreement;

98 (2) Any tax assessed or assessment or mandated expenditure on
99 a per capita or per employee basis shall be assessed against the client
100 for covered employees and against the professional employer
101 organization for its employees who are not covered employees
102 coemployed with a client. Benefits or monetary consideration that
103 meet the requirements of mandates imposed on a client and that are
104 received by covered employees through the PEO either through payroll
105 or through benefit plans sponsored by the PEO shall be credited
106 against the client's obligation to fulfill such mandates; and

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

285.740. 1. The responsibility to obtain workers' compensation
2 coverage for covered employees in compliance with all applicable laws
3 shall be specifically allocated in the professional employer agreement
4 to either the client or the PEO.

5 2. (1) Coverage for both the directly employed workers of a
6 client and the covered employees of that client shall be all in the
7 residual or all in the voluntary market with the same carrier.

8 (2) Workers' compensation coverage for covered employees in the
9 voluntary market may be obtained by either:

10 (a) The client through a standard workers' compensation policy
11 or through duly authorized self-insurance under section 287.280; or

12 (b) The PEO through duly authorized self insurance under
13 section 287.280, through the type of policy referenced under the
14 provisions of 20 CSR 500-6.800(5)(c)2 issued to the PEO by a carrier
15 authorized to do business in this state, or through a multiple
16 coordinated workers' compensation policy issued by a carrier
17 authorized to do business in this state in the name of the PEO or the
18 client.

19 A PEO authorized to self-insure under section 287.280 shall report to
20 the insurer or the appropriate state and rating authorities such
21 client-based information as is necessary to maintain the client's
22 experience rating.

23 **(3) Workers' compensation for covered employees in the residual**
24 **market may be obtained by the client through a residual market policy**
25 **or by the PEO through a multiple coordinated policy in either the name**
26 **of the PEO or the client that provides to the appropriate state and**
27 **rating authorities the client-based information satisfactory to maintain**
28 **the client's experience rating.**

29 **3. A PEO that applies for coverage or is covered through the**
30 **voluntary market shall also maintain and furnish to the insurer**
31 **sufficient information to permit the calculation of an experience**
32 **modification factor for each client upon termination of the**
33 **coemployment relationship. Information reported during the term of**
34 **the coemployment relationship which is used to calculate an experience**
35 **modification factor for a client prior to and upon termination of the**
36 **professional employer agreement shall continue to be used in the future**
37 **experience ratings of the PEO. Such information shall include:**

38 **(1) The client's corporate name;**

39 **(2) The client's taxpayer or employer identification number;**

40 **(3) Payroll summaries and class codes applicable to each client,**
41 **and, if requested by the insurer, a listing of all covered employees**
42 **associated with a given client; and**

43 **(4) Claims information grouped by client, and any other**
44 **information maintained by or readily available to the PEO that is**
45 **necessary for the calculation of an experience modification factor for**
46 **each client.**

47 **4. In addition to any other provision of chapter 287, any material**
48 **violations of this section by a PEO is grounds for cancellation or**
49 **nonrenewal of the PEO's insurance policy by the insurer. If a PEO has**
50 **received notice that its workers' compensation insurance policy will be**
51 **canceled or nonrenewed, the PEO shall notify by certified mail, within**
52 **ten days after the receipt of the notice, all of the clients for which there**
53 **is a coemployment relationship covered under the policy to be**
54 **canceled, provided that notice shall not be required if the PEO has**
55 **obtained another insurance policy from a carrier authorized to do**
56 **business in this state, with an effective date that is the same as the date**
57 **of cancellation or nonrenewal.**

58 **5. If the coemployment relationship with a client is terminated,**
59 **the client shall utilize an experience modification factor which reflects**

60 its individual experience, including, if applicable, experience incurred
61 for covered employees under the professional employer agreement. The
62 PEO shall provide to the client the client's information that is
63 maintained under subsection 3 of this section within five business days
64 of receiving notice from the client or within five business days of
65 providing notice to the client that the coemployment relationship will
66 terminate. The PEO shall also provide such information to any future
67 client insurer, if requested by such client. The PEO shall notify the
68 insurer of its intent to terminate any client relationship prior to
69 termination when feasible. When prior notice is not feasible, the PEO
70 shall notify its insurer within five business days following actual
71 termination.

72 6. Both the client and the PEO shall be considered the employer
73 for purposes of coverage under chapter 287. The protection of the
74 exclusive remedy provision under section 287.120 shall apply to the
75 PEO, the client, and to all covered employees and other employees of
76 the client irrespective of which coemployer obtains such workers'
77 compensation coverage. Nothing in this section shall be construed to
78 exempt either the client or the PEO from compliance with the
79 provisions of chapter 287.

80 7. A client may request the information maintained under
81 subsection 3 of this section at any time and every PEO shall provide
82 that information to such client within five business days of receiving
83 such a request.

84 8. In the case of a request for information by a third party
85 requesting verification of a client's experience modification factor for
86 a client in the type of policy referenced under the provisions of 20 CSR
87 500-6.800(5)(c)2, the PEO shall, within five business days of receipt of
88 receiving the client's consent, provide such third party with only the
89 information maintained by the PEO under subsection 3 of this section.
90 If a client refuses to grant consent to a request for information under
91 this subsection, the PEO shall notify the requesting third party that the
92 client has refused to consent to the disclosure of the information
93 maintained by the PEO under subsection 3 of this section.

94 9. A client shall provide any prospective insurer with the
95 information maintained by the PEO under subsection 3 of this section
96 upon receiving such information from the PEO. Failure to provide a

97 future insurer with such information shall be considered a violation of
98 subsection 6 of section 287.128.

99 10. (1) A client shall notify any prospective insurer of the
100 client's previous or current relationship with a PEO. Failure to provide
101 a future insurer with such information shall be considered a violation
102 of subsection 6 of section 287.128.

103 (2) This subsection shall not apply if the PEO did not provide
104 workers' compensation coverage to a client during the coemployment
105 relationship.

106 11. For purposes of chapter 288, a PEO registered under sections
107 285.700 to 285.750 shall be treated as a "lesser employing unit" under
108 section 288.032.

285.750. 1. A person shall not knowingly:

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

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

10 2. Disciplinary action shall be taken by the secretary of state for
11 violation of this section for:

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

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

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

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

24 (1) Deny an application for a license;

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

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

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

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

✓

Unofficial

Bill

Copy