

FIRST REGULAR SESSION

HOUSE BILL NO. 757

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JONES.

1648H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 288.032, RSMo, and to enact in lieu thereof twelve 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Section A. Section 288.032, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 285.700, 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.735, 285.740, 285.745, 285.750, and 288.032, to read as follows:

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

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 which is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and this act. 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 this act;**

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 this act; 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 this act;**

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 this act.**

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) “Department”, the department of labor and industrial relations;**

31 **(6) “Director”, the director of the department of labor and industrial relations;**

32 **(7) “PEO group”, any two or more PEOs that are majority owned or commonly**
33 **controlled by the same entity, parent, or controlling person;**

34 **(8) “Person”, any individual, partnership, corporation, limited liability company,**
35 **association, or any other form of legally recognized entity;**

36 **(9) “Professional employer agreement”, a written contract by and between a client**
37 **and a PEO that provides:**

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

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

41 **(c) That the PEO and the client assume the responsibilities required by this act;**

42 **(10) “Professional employer organization” or “PEO”, any person engaged in the**
43 **business of providing professional employer services. A person engaged in the business of**
44 **providing professional employer services shall be subject to registration and regulation**
45 **under this act regardless of its use of the term or conducting business as a professional**
46 **employer organization, PEO, staff leasing company, registered staff leasing company,**
47 **employee leasing company, administrative employer, or any other name.**

48 **The following shall not be deemed to be professional employer organizations or the**
49 **providing of professional employment services for the purposes of this act:**

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 **(11) “Professional employer services”, the service of entering into coemployment**
60 **relationships under this act in which all or a majority of the employees providing services**
61 **to a client or to a division or work unit of a client are covered employees;**

62 **(12) “Registrant”, a PEO registered under this act;**

63 **(13) “Temporary help services”, services consisting of a person:**

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

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

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

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

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

5 **2. Nothing in this act or in any professional employer agreement shall:**

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

9 **(2) Affect, modify, or amend any contractual relationship or restrictive covenant**
10 **between a covered employee and any client in effect at the time a professional employer**
11 **agreement becomes effective. A professional employer agreement shall also not prohibit**
12 **or amend any contractual relationship or restrictive covenant that is entered into**

13 subsequently between a client or a covered employee. A PEO shall have no responsibility
14 or liability in connection with, or arising out of, any such existing or new contractual
15 relationship or restrictive covenant unless the PEO has specifically agreed otherwise in
16 writing; or

17 (3) Create any new or additional enforceable right of a covered employee against
18 a PEO that is not specifically provided by the professional employer agreement or this act.

19 3. Nothing contained in this act or any professional employer agreement shall
20 affect, modify, or amend any state, local, or federal licensing, registration, or certification
21 requirement applicable to any client or covered employee.

22 (1) A covered employee who shall be licensed, registered, or certified according to
23 law or regulation is deemed solely an employee of the client for purposes of any such
24 license, registration, or certification requirement.

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

30 (3) A client shall have the sole right of direction and control of the professional or
31 licensed activities of covered employees and of the client's business. Such covered
32 employees and clients shall remain subject to regulation by the regulatory or governmental
33 entity responsible for licensing, registration, or certification of such covered employees or
34 clients.

35 4. For purposes of determination of tax credits and other economic incentives
36 provided by this state or other government entity and based on employment, covered
37 employees shall be deemed employees solely of the client. A client shall be entitled to the
38 benefit of any tax credit, economic incentive, or other benefit arising as the result of the
39 employment of covered employees of such client. Notwithstanding that the PEO is the W-2
40 reporting employer, the client shall continue to qualify for such benefit, incentive, or credit.
41 If the grant or amount of any such incentive is based on number of employees, then each
42 client shall be treated as employing only those covered employees coemployed by the client.
43 Covered employees working for other clients of the PEO shall not be counted. Each PEO
44 will provide, upon request by a client or an agency or department of this state, employment
45 information reasonably required by any agency or department of this state responsible for
46 administration of any such tax credit or economic incentive and necessary to support any
47 request, claim, application, or other action by a client seeking any such tax credit or
48 economic incentive.

49 **5. With respect to a bid, contract, purchase order, or agreement entered into with**
50 **the state or a political subdivision of the state, a client company's status or certification as**
51 **a small, minority-owned, disadvantaged, or woman-owned business enterprise, or as a**
52 **historically underutilized business is not affected because the client company has entered**
53 **into an agreement with a PEO or uses the services of a PEO.**

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

4 **2. Each applicant for registration under this act shall provide the department with**
5 **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 may 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 department, but any such request shall be accompanied by**
26 **a letter from the auditors stating the reasons for the delay and the anticipated audit**
27 **completion date. The financial statement shall be prepared in accordance with generally**
28 **accepted accounting principals and audited by an independent certified public accountant**
29 **licensed to practice in the jurisdiction in which such accountant is located and shall be**
30 **without qualification as to the going concern status of the PEO. A PEO group may submit**
31 **combined or consolidated audited financial statements to meet the requirements of this**

32 section. A PEO that has not had sufficient operating history to have audited financials
33 based upon at least twelve months of operating history shall meet the financial capacity
34 requirements of this act and present financial statements reviewed by a certified public
35 accountant.

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

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

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

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

63 6. (1) A PEO is eligible for a limited registration under this act if such PEO:

64 (a) Submits a properly executed request for limited registration on a form provided
65 by the department;

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

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

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

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

73 (3) A PEO seeking limited registration under this section shall provide the
74 department with information and documentation necessary to show that the PEO qualifies
75 for a limited registration.

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

78 7. The department shall maintain a list of professional employer organizations
79 registered under this act that is readily available to the public by electronic or other means.

80 8. The department may prescribe forms necessary to promote the efficient
81 administration of this section.

82 9. The department shall, to the extent practical, permit by rule the acceptance of
83 electronic filings in conformance with sections 432.200 to 432.295, including applications,
84 documents, reports, and other filings required by this act. Such rule may provide for the
85 acceptance of electronic filings and other assurance by an independent and qualified
86 assurance organization approved by the director that provides satisfactory assurance of
87 compliance acceptable to the department consistent with or in lieu of the requirements of
88 sections 285.715, 285.725, and other requirements of this act or the rules promulgated
89 pursuant to it. Such rule shall permit a PEO to authorize an assurance organization
90 approved by the director to act on the PEO's behalf in complying with the registration
91 requirements of this act, including electronic filings of information and payment of
92 registration fees. Use of such an approved assurance organization shall be optional and
93 not mandatory for a registrant. Nothing in this subsection shall limit or change the
94 department's authority to register or terminate registration of a professional employer
95 organization or to investigate or enforce any provision of this act.

96 10. All records, reports, and other information obtained from a PEO under this act,
97 except to the extent necessary for the proper administration of this act by the department
98 shall be confidential and shall not be published or open to public inspection other than to
99 public employees in the performance of their public duties.

285.720. 1. Upon filing an initial registration statement under this act, a PEO shall
2 pay an initial registration fee not to exceed five hundred dollars.

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

5 **3. The department shall determine by rule 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 subsection 9 of section 285.715 shall pay an**
11 **initial and annual fee not to exceed two hundred fifty dollars.**

12 **6. No fee charged under this act shall exceed the amount reasonably necessary for**
13 **the administration of this act.**

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

285.730. 1. Except as specifically provided in this act or in the professional
2 **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 by this act or set forth in the**
8 **professional employer agreement. The rights, duties, and obligations of the PEO as**
9 **coemployer with respect to any covered employee shall be limited to those arising pursuant**
10 **to the professional employer agreement and this act during the term of coemployment by**
11 **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 in this act, the coemployment relationship**
18 **between the client and the PEO, and between each coemployer and each covered employee**
19 **shall be governed by the professional employer agreement. Each professional employer**
20 **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) That the PEO shall have responsibility to pay wages to covered employees; to**
24 **withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the**
25 **extent the PEO has assumed responsibility in the professional employer agreement, to**
26 **make payments for employee benefits for covered employees. As used in this section, the**
27 **term “wages” does not include any obligation between a client and a covered employee for**
28 **payments beyond or in addition to the covered employee’s salary, draw, or regulate rate**
29 **of pay, such as bonuses, commissions, severance pay, deferred compensation, profit**
30 **sharing, vacation, sick, or other paid time off pay, unless the PEO has expressly agreed to**
31 **assume liability for such payments in the professional employer agreement;**

32 **(3) That the PEO shall have a right to hire, discipline, and terminate a covered**
33 **employee as may be necessary to fulfill the PEO’s responsibilities under this act and the**
34 **professional employer agreement. The client shall have a right to hire, discipline, and**
35 **terminate a covered employee; and**

36 **(4) The responsibility to obtain workers’ compensation coverage for covered**
37 **employees from a carrier licensed to do business in this state and otherwise in compliance**
38 **with all applicable requirements, shall be specifically allocated to either the client or the**
39 **PEO in the professional employer agreement.**

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 which is not covered by workers' compensation, or**
63 **liquor liability insurance carried by the PEO unless the covered employees are included**
64 **by specific reference in the professional employer agreement and applicable prearranged**
65 **employment contract, insurance contract, or bond.**

66 **5. A PEO under this act is not engaged in the sale of insurance or in acting as a**
67 **third party administrator by offering, marketing, selling, administering, or providing**
68 **professional employer services which include services and employee benefit plans for**
69 **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, workers' compensation, payroll taxes,**
77 **withholding, or other assessments paid to or on behalf of a covered employee by the**
78 **professional employer 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.**

2 **285.735. 1. A client and a registered PEO shall each be deemed an employer under**
3 **the laws of this state for purposes of sponsoring retirement and welfare benefit plans for**
4 **its covered employees.**

5 **2. A fully-insured welfare benefit plan offered to the covered employees of a single**
6 **PEO shall be treated for purposes of state law as a single employer welfare benefit plan.**

7 **3. For purposes of sections 379.930 to 379.952, a PEO shall be considered the**
8 **employer of all of its covered employees, and all covered employees of one or more clients**
9 **participating in a health benefit plan sponsored by a single PEO shall be considered**
10 **employees of that PEO.**

11 **4. If a PEO offers to its covered employees any health benefit plan that is not fully**
12 **insured by an authorized insurer, the plan shall:**

13 **(1) Utilize a third-party administrator licensed to do business in this state;**

14 **(2) Hold all plan assets, including participant contributions, in a trust account**
15 **consistent with the requirements of Section 403 of the Employee Retirement Income**
16 **Security Act of 1974 ("ERISA");**

17 **(3) Provide sound reserves for such plan as determined using generally accepted**
18 **actuarial standards of practice and consistent with the prudence and loyalty standards of**
19 **care for ERISA fiduciaries ; and**

20 **(4) Provide written notice to each covered employee participating in the benefit**
plan that the plan is self-funded or is not fully-insured.

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

5 **2. Coverage for both the directly employed workers of a client and the covered**
6 **employees of that client shall be all in the residual or all in the voluntary market.**

7 **(1) Workers' compensation coverage for covered employees in the voluntary**
8 **market may be obtained by either the client through a standard workers' compensation**
9 **policy or through duly authorized self-insurance or by the PEO through a duly authorized**
10 **self insurance program, through a master policy issued to the PEO by a carrier authorized**
11 **to do business in this state, or through a multiple coordinated policy issued by a carrier**
12 **authorized to do business in this state in the name of the PEO or the client. A carrier**
13 **providing coverage through the PEO or a PEO authorized to self-insure shall report to the**
14 **appropriate state and rating authorities such client-based information as is necessary**
to maintain the client's experience rating.

15 **(2) Workers' compensation for covered employees in the residual market may be**
16 **obtained by the client through a residual market policy or by the PEO through a multiple**
17 **coordinated policy in either the name of the PEO or the client that provides to the**
18 **appropriate state and rating authorities the client-based information satisfactory to**
19 **maintain the client's experience rating.**

20 **3. Both the client and the PEO shall be considered the employer for purposes of**
21 **coverage under the workers' compensation act. The protection of the exclusive remedy**
22 **provision of the workers' compensation act shall apply to the PEO, the client, and to all**
23 **covered employees and other employees of the client irrespective of which coemployer**
24 **obtains such workers' compensation coverage.**

285.745. For purposes of the unemployment compensation laws, a PEO registered
2 **under this act shall be treated as a "lessor employing unit" under section 288.032. On the**
3 **termination of a contract between a PEO and a client or the failure by a PEO to submit**
4 **reports or make tax payments as required by this act, the client shall be treated as a new**
5 **employer without a previous experience record unless that client is otherwise eligible for**
6 **an experience rating.**

285.750. 1. A person may 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 this act.**

6 **(2) Provide false or fraudulent information to the department in conjunction with**
7 **any registration, renewal, or in any report required under this act.**

8 **2. Disciplinary action may be taken by the department for violation of this section**
9 **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 department or other**
14 **governmental agency; or**

15 **(3) A willful violation of this act or any order or regulation issued by the**
16 **department under this act.**

17 **3. Upon finding, after notice and opportunity for hearing, that a PEO, or a**
18 **controlling person of a PEO, or a person offering PEO services has violated one or more**
19 **provisions of this section and subject to appeal, the director 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 **department specifies; or**
26 **(5) Issue a cease and desist.**

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
49 unit", as defined in subdivision (5) of this subsection, and has elected to become liable for
50 payments in lieu of contributions as provided in subsection 3 of section 288.090, shall pay the
51 division payments in lieu of contributions, interest, penalties and surcharges in accordance with
52 section 288.090 on benefits paid to individuals performing services for the client lessees of the
53 lessor employing unit. If the lessor employing unit has not timely complied with the provisions
54 of subdivision (3) of this subsection, any client lessees with services attributable to and
55 performed for the client lessees shall be jointly and severally liable for any unpaid payments in
56 lieu of contributions, interest, penalties and surcharges due pursuant to this law. The lessor
57 employing unit shall keep separate records and submit separate quarterly contribution and wage
58 reports for each of its client lessees. Delinquent payments in lieu of contributions, interest,
59 penalties and surcharges shall be collected in accordance with subsection 3 of section 288.090.
60 The election to be liable for payments in lieu of contributions made by a governmental entity or
61 nonprofit organization meeting the definition of "lessor employing unit" may be terminated by
62 the division 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, or a**
95 governmental entity as defined in subsection 1 of section 288.030 or nonprofit organization as
96 defined in subsection 3 of section 288.090 which, pursuant to a written lease agreement between
97 the lessor employing unit and the client lessees, engages in the business of providing individuals
98 to any other employer, individual, organization, partnership, corporation, other legal entity or
99 employing unit referred to in this subsection as a client lessee.

100 (6) The provisions of this subsection shall not be applicable to private employment
101 agencies who provide their employees to employers on a temporary help basis provided the

102 private employment agencies are liable as employers for the payment of contributions on wages
103 paid to temporary workers so employed.

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

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

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