

HOUSE BILL NO. 1656

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

5465H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto nine new sections relating to professional employer organizations.

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

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

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

3 **2. The secretary of state or any person designated by the secretary of state may**
4 **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:

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

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

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

10 **(a) The PEO is entitled to enforce only such employer rights and is subject to only**
11 **those obligations specifically allocated to the PEO by the professional employer agreement**
12 **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, staff leasing company, registered staff leasing**
46 **company, employee leasing company, administrative employer, or any other name. The**
47 **following shall not be deemed to be professional employer organizations or the providing**
48 **of professional employment services for the purposes of sections 285.700 to 285.750:**

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

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

57 (c) Providing temporary help services;

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

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

63 (11) "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 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 a
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 the determination of tax credits, economic incentives, or other
39 benefits provided by this state or any 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 himself or herself out as providing professional**
3 **employer services in this state, unless such person is registered under sections 285.700 to**
4 **285.750.**

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

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

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

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

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

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

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

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

30 public accountant licensed to practice in the jurisdiction in which such accountant is
31 located and shall be without qualification as to the going concern status of the PEO. A
32 PEO or PEO group may submit combined or consolidated audited financial statements to
33 meet the requirements of this section. A PEO that has not had sufficient operating history
34 to have audited financials based upon at least twelve months of operating history shall meet
35 the financial capacity requirements of sections 285.700 to 285.750 and present financial
36 statements reviewed by a certified public accountant.

37 3. (1) Each PEO operating within this state as of August 28, 2018, shall complete
38 its initial registration not later than one hundred eighty days after August 28, 2018. Such
39 initial registration shall be valid until one hundred eighty days from the end of the PEO's
40 first fiscal year that is more than one year after the effective date of sections 285.700 to
41 285.750.

42 (2) Each PEO not operating within this state as of August 28, 2018, shall complete
43 its initial registration prior to initiating operations within this state. In the event a PEO
44 not registered in this state becomes aware that an existing client not based in this state has
45 employees and operations in this state, the PEO shall either decline to provide PEO
46 services for those employees or notify the secretary of state within five business days of its
47 knowledge of this fact and file a limited registration application under subsection 6 of this
48 section or a full business registration if there are more than fifty covered employees. The
49 secretary of state may issue an interim operating permit for the period the registration
50 applications are pending if the PEO is currently registered or licensed by another state and
51 the secretary of state determines it to be in the best interest of the potential covered
52 employees.

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

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

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

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

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

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

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

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

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

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

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

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

87 **9. The secretary of state shall, to the extent practical, permit the acceptance of**
88 **electronic filings in conformance with sections 432.200 to 432.295, including applications,**
89 **documents, reports, and other filings required by sections 285.700 to 285.750. The**
90 **secretary of state may provide for the acceptance of electronic filings and other assurance**
91 **by an independent and qualified assurance organization approved by the secretary of state**
92 **that provides satisfactory assurance of compliance acceptable to the secretary of state**
93 **consistent with or in lieu of the requirements of sections 285.715 and 285.725 and other**
94 **requirements of sections 285.700 to 285.750. The secretary of state shall permit a PEO to**
95 **authorize such an approved assurance organization to act on the PEO's behalf in**
96 **complying with the registration requirements of sections 285.700 to 285.750, including**
97 **electronic filings of information and payment of registration fees. Use of such an approved**
98 **assurance organization shall be optional and not mandatory for a registrant. Nothing in**
99 **this subsection shall limit or change the secretary's authority to register or terminate**
100 **registration of a PEO or to investigate or enforce any provision of sections 285.700 to**
101 **285.750.**

102 **10. All records, reports, and other information obtained from a PEO under sections**
103 **285.700 to 285.750, except to the extent necessary for the proper administration of sections**
104 **285.700 to 285.750 by the secretary of state, shall be confidential and shall not be**
105 **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. No fee charged under sections 285.700 to 285.750 shall exceed the amount**
11 **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. Such bond is**
9 **to be held by a depository designated by the secretary 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 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 employee is included by specific**
64 **reference in the professional employer agreement and applicable prearranged employment**
65 **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. The provisions of this section shall not supercede or preempt**
70 **any requirements under section 375.014.**

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

73 **(1) Any tax or assessment imposed upon professional employer services or any**
74 **business license or other fee that is based upon gross receipts shall allow a deduction from**
75 **the gross income or receipts of the business derived from performing professional employer**
76 **services that is equal to that portion of the fee charged to a client that represents the actual**
77 **cost of wages and salaries, benefits, payroll taxes, withholding, or other assessments paid**
78 **to or on behalf of a covered employee by the PEO under a professional employer**
79 **agreement;**

80 **(2) Any tax assessed or assessment or mandated expenditure on a per capita or per**
81 **employee basis shall be assessed against the client for covered employees and against the**

82 PEO for its employees who are not covered employees coemployed with a client. Benefits
83 or monetary consideration that meet the requirements of mandates imposed on a client and
84 that are received by covered employees through the PEO either through payroll or through
85 benefit plans sponsored by the PEO shall be credited against the client's obligation to fulfill
86 such mandates; and

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

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

4 2. (1) Coverage for both the directly-employed workers of a client and the covered
5 employees of that client shall be all in the residual or all in the voluntary market with the
6 same carrier.

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

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

11 (b) The PEO through duly authorized self-insurance under section 287.280,
12 through a master policy issued to the PEO by a carrier authorized to do business in this
13 state, or through a multiple coordinated workers' compensation policy issued by a carrier
14 authorized to do business in this state in the name of the PEO or the client.

15

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

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

24 3. A PEO that applies for coverage or is covered through the voluntary market
25 shall also maintain and furnish to the insurer sufficient information to permit the
26 calculation of an experience modification factor for each client upon termination of the
27 coemployment relationship. Information reported during the term of the coemployment
28 relationship that is used to calculate an experience modification factor for a client prior to

29 and upon termination of the professional employer agreement shall continue to be used in
30 the future experience ratings of the PEO. Such information shall include:

31 (1) The client's corporate name;

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

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

35 (4) Claims information grouped by client, and any other information maintained
36 by or readily available to the PEO that is necessary for the calculation of an experience
37 modification factor for each client.

38 4. In addition to any other provision of chapter 287, any material violations of this
39 section by a PEO is grounds for cancellation or nonrenewal of the PEO's insurance policy
40 by the insurer. If a PEO has received notice that its workers' compensation insurance
41 policy will be canceled or nonrenewed, the PEO shall notify by certified mail, within ten
42 days after the receipt of the notice, all of the clients for which there is a coemployment
43 relationship covered under the policy to be canceled, provided that notice shall not be
44 required if the PEO has obtained another insurance policy from a carrier authorized to do
45 business in this state, with an effective date that is the same as the date of cancellation or
46 nonrenewal.

47 5. If the coemployment relationship with a client is terminated, the client shall
48 utilize an experience modification factor which reflects its individual experience, including,
49 if applicable, experience incurred for covered employees under the professional employer
50 agreement. The PEO shall provide to the client the client's information that is maintained
51 under subsection 3 of this section within five business days of receiving notice from the
52 client or within five business days of providing notice to the client that the coemployment
53 relationship will terminate. The PEO shall also provide such information to any future
54 client insurer, if requested by such client. The PEO shall notify the insurer of its intent to
55 terminate any client relationship prior to termination when feasible. When prior notice
56 is not feasible, the PEO shall notify its insurer within five business days following actual
57 termination.

58 6. Both the client and the PEO shall be considered the employer for purposes of
59 coverage under chapter 287. The protection of the exclusive remedy provision under
60 section 287.120 shall apply to the PEO, the client, and to all covered employees and other
61 employees of the client irrespective of which coemployer obtains such workers'
62 compensation coverage. Nothing in this section shall be construed to exempt either the
63 client or the PEO from compliance with the provisions of chapter 287.

64 7. A client may request the information maintained under subsection 3 of this
65 section at any time and every PEO shall provide such information to such client within five
66 business days of receiving such a request.

67 8. A client shall provide any prospective insurer with the information maintained
68 by the PEO under subsection 3 of this section upon receiving such information from the
69 PEO. Failure to provide a future insurer with such information shall be considered a
70 violation of subsection 6 of section 287.128.

71 9. (1) A client shall notify any prospective insurer of the client's previous or
72 current relationship with a PEO. Failure to provide a future insurer with such
73 information shall be considered a violation of subsection 6 of section 287.128.

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

76 10. For purposes of chapter 288, a PEO registered under sections 285.700 to
77 285.750 shall be treated as a lesser employing unit under section 288.032.

 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 shall 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.**

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