

HOUSE BILL No. 2087

By Committee on Insurance

1-26

9 AN ACT enacting the Kansas professional employer organization licens-
10 ing act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. The provisions of this act shall be known and may be cited
14 as the professional employer organization licensing act.

15 Sec. 2. As used in this act:

16 (a) "Client" means any person who enters into a professional em-
17 ployer agreement with a professional employer organization.

18 (b) "Co-employer" means either a professional employer organiza-
19 tion or a client, except under the provisions of the Kansas workers com-
20 pensation act, wherein the client is deemed the employer.

21 (c) "Co-employment relationship" means a relationship which is in-
22 tended to be an ongoing relationship rather than a temporary or project
23 specific one, wherein the rights, duties and obligations of an employer
24 which arise out of an employment relationship have been allocated be-
25 tween co-employers pursuant to a professional employer agreement and
26 this act. In a co-employment relationship:

27 (1) The professional employer organization is entitled to enforce only
28 employer rights and is subject to only those obligations specifically allo-
29 cated to the professional employer organization by the professional em-
30 ployer agreement or this act;

31 (2) the client is entitled to enforce those rights and obligated to pro-
32 vide and perform those employer obligations allocated to the client by
33 the professional employer agreement and this act; and

34 (3) the client is entitled to enforce any right and obligated to perform
35 any obligation of an employer not specifically allocated to the professional
36 employer organization by the professional employer agreement or this
37 act.

38 (d) "Commissioner" means the commissioner of insurance.

39 (e) "Covered employee" means an individual having a co-employ-
40 ment relationship with a professional employer organization and a client
41 where:

42 (1) The individual has received written notice of co-employment with
43 the professional employer organization; and

- 1 (2) the individual's co-employment relationship is pursuant to a pro-
2 fessional employer agreement subject to this act. Individuals who are
3 officers, directors, shareholders, partners and managers of the client will
4 be covered employees to the extent the professional employer organiza-
5 tion and the client have expressly agreed in the professional employer
6 agreement that such individuals would be covered employees and pro-
7 vided the individuals meet the criteria of this paragraph and act as op-
8 erational managers or perform day-to-day operational services for the
9 client.
- 10 (f) "Department" means the insurance department.
- 11 (g) "Direct purchase basis" means an arrangement in which all con-
12 tractual obligations under the insurance policy run directly between the
13 insurer and the client without the involvement of the professional em-
14 ployer organization, whether the arrangement is negotiated solely be-
15 tween the client and the insurer or is negotiated with the assistance of
16 the professional employer organization.
- 17 (h) "Independent certified public accountant" means a person who
18 has been certified by a state examining board as having met the state's
19 legal requirements for the practice of public accounting and conforms to
20 the standards as contained in the code of professional ethics of the Amer-
21 ican institute of certified public accountants.
- 22 (i) "Multiple coordinated policy basis" means an arrangement under
23 which a separate policy is issued to or on behalf of each client but payment
24 obligations and certain policy communications are coordinated through
25 the professional employer organization.
- 26 (j) "PEO group" means two or more professional employer organi-
27 zations that are majority owned or commonly controlled by the same
28 entity, parent or controlling persons.
- 29 (k) "Person" means any individual, partnership, corporation, limited
30 liability company, association or any other form of legally recognized
31 entity.
- 32 (l) "Professional employer agreement" means a written contract by
33 and between a client and a professional employer organization that
34 provides:
- 35 (1) For the co-employment of covered employees;
- 36 (2) for the allocation of employer rights and obligations between the
37 client and the professional employer organization with respect to the cov-
38 ered employees; and
- 39 (3) that the professional employer organization and the client assume
40 the responsibilities required by this act.
- 41 (m) "Professional employer organization" or "PEO" means any per-
42 son engaged in the business of providing professional employer services.
43 A person engaged in the business of providing professional employer

1 services shall be subject to licensing and regulation under this act regard-
2 less of its use of the term or conducting business as a professional em-
3 ployer organization, PEO, staff leasing company, licensed staff leasing
4 company, employee leasing company, administrative employer or any
5 other name.

6 (n) "Professional employer services" shall mean the service of enter-
7 ing into co-employment relationships under this act in which all or a
8 majority of the employees providing services to a client or to a division
9 or work unit of a client are covered employees.

10 (o) "Licensee" means a PEO licensed under this act.

11 (p) "Temporary help services" means services consisting of a person:

12 (1) Recruiting and hiring its own employees;

13 (2) finding other organizations that need the services of those
14 employees;

15 (3) assigning those employees to perform work at or services for the
16 other organizations to support or supplement the other organizations'
17 workforces or to provide assistance in special work situations such as, but
18 not limited to, employee absences, skill shortages, seasonal workloads or
19 to perform special assignments or projects; and

20 (4) customarily attempting to reassign the employees to other organ-
21 izations when they finish each assignment.

22 Sec. 3. (a) Nothing contained in this act or in any professional em-
23 ployer agreement shall affect, modify or amend any collective bargaining
24 agreement, or the rights or obligations of any client, PEO or covered
25 employee under the federal national labor relations act, the federal rail-
26 way labor act or K.S.A. 44-614, and amendments thereto.

27 (b) Nothing in this act or in any professional employer agreement
28 shall:

29 (1) Diminish, abolish or remove rights of covered employees to a
30 client or obligations of the client to a covered employee existing prior to
31 the effective date of the professional employer agreement;

32 (2) affect, modify or amend any contractual relationship or restrictive
33 covenant between a covered employee and any client in effect at the time
34 a professional employer agreement becomes effective. Nor shall it pro-
35 hibit or amend any contractual relationship or restrictive covenant that is
36 entered into subsequently between a client and a covered employee. A
37 PEO shall have no responsibility or liability in connection with, or arising
38 out of, any existing or new contractual relationship or restrictive covenant
39 unless the PEO has specifically agreed otherwise in writing; or

40 (3) create any new or additional enforceable right of a covered em-
41 ployee against a PEO that is not specifically provided by the professional
42 employer agreement or this act.

43 (c) Nothing contained in this act or any professional employer agree-

1 ment shall affect, modify or amend any state, local or federal licensing,
2 registration or certification requirement applicable to any client or cov-
3 ered employee.

4 (d) A covered employee who must be licensed, registered or certified
5 according to law or regulation is deemed solely an employee of the client
6 for purposes of any license, registration or certification requirement.

7 (e) A PEO shall not be deemed to engage in any occupation, trade,
8 profession or other activity that is subject to licensing, registration or
9 certification requirements, or is otherwise regulated by a governmental
10 entity solely by entering into and maintaining a co-employment relation-
11 ship with a covered employee who is subject to such requirements or
12 regulation.

13 (f) A client shall have the sole right of direction and control of the
14 professional or licensed activities of covered employees and of client's
15 business. Covered employees and clients shall remain subject to regula-
16 tion by the regulatory or governmental entity responsible for licensing,
17 registration or certification of the covered employees or clients.

18 (g) With respect to a bid, contract, purchase order or agreement en-
19 tered into with the state or a political subdivision of the state, a client
20 company's status or certification as a small, minority-owned, disadvan-
21 tagged or woman-owned business enterprise or as a historically underutil-
22 ized business is not affected because the client company has entered into
23 an agreement with a PEO or uses the services of a PEO.

24 Sec. 4. No person shall open, operate or maintain a professional em-
25 ployer organization for the purpose of providing professional employer
26 services or use the names PEO, professional employer organization, staff
27 leasing company, licensed staff leasing company, employee leasing, ad-
28 ministrative employer or other title representing professional employer
29 services without first obtaining a license from the department pursuant
30 to this act.

31 Sec. 5. (a) Each applicant for a license under this act shall provide
32 the department with the following information:

- 33 (1) The name or names under which the PEO conducts business;
- 34 (2) the address of the principal place of business of the PEO and the
35 address of each office it maintains in this state;
- 36 (3) the PEO's taxpayer or employer identification number;
- 37 (4) a list by jurisdiction of each name under which the PEO has op-
38 erated in the preceding five years, including any alternative names, names
39 of predecessors and, if known, successor business entities;
- 40 (5) a statement of ownership, which shall include the name and evi-
41 dence of the business experience of any person that, individually or acting
42 in concert with one or more other persons, owns or controls, directly or
43 indirectly, 25% or more of the equity interests of the PEO;

- 1 (6) a statement listing the names and contact information of other
2 PEO's that stockholders have had an interest in during the preceding 10
3 years;
- 4 (7) the name and address of the PEO's registered agent for the pur-
5 pose of accepting service of process in the state;
- 6 (8) a statement of management, which shall include the name and
7 evidence of the business experience of any person who serves as presi-
8 dent, chief executive officer or otherwise has the authority to act as senior
9 executive officer of the PEO, including any previous PEO's management
10 has worked for; and
- 11 (9) (A) if the PEO has had at least 12 months of operating history a
12 copy of the annual audit from an independent certified public accountant
13 licensed to practice in the jurisdiction where the accountant is located;
14 or
- 15 (B) If the PEO has not had sufficient operating history to have had
16 an audit performed on financial statements that are based upon at least
17 12 months of operating history then the PEO shall provide an interim
18 financial report;
- 19 (b) the annual audit under (9)(A) or the financial report under (9)(B)
20 shall indicate that:
- 21 (1) The PEO is in compliance with the requirements of section 9,
22 and amendments thereto, of this act; and
- 23 (2) all liabilities for wages, employee benefit plan premiums, federal,
24 state and local withholding taxes, unemployment insurance taxes and
25 workers' compensation premiums have been paid in a timely manner.
- 26 (c) Each PEO operating within this state as of the effective date of
27 this act shall complete its initial application for a license not later than 60
28 days after the effective date of this act. Such initial license shall be valid
29 until June 30 of the year following the effective date of this act.
- 30 (d) All financial and business records of the PEO and client shall be
31 open to and subject to inspection by the department. Such records may
32 be used and disclosed for official business.
- 33 (e) The PEO shall report their client list with the beginning date of
34 coverage for each client and immediately notify the department of the
35 end date of any professional employer agreement.
- 36 (f) Each PEO not operating within this state as of the effective date
37 of this act shall complete its initial application for license prior to com-
38 mencement of operations within this state.
- 39 Sec. 6. (a) By July 1 of each year, a PEO or PEO group shall renew
40 its license by:
- 41 (1) Notifying the department of any changes in the information pro-
42 vided in the licensee's most recent application for license or license re-
43 newal; and

1 (2) providing the department with a copy of the annual audit for the
2 latest fiscal year from an independent certified public accountant licensed
3 to practice in the jurisdiction where the accountant is located that:

4 (A) The PEO has financial statements that present the financial con-
5 dition of the PEO or PEO group fairly and accurately in accordance with
6 generally accepted accounting principles;

7 (B) the PEO is in compliance with the requirements of section 9, and
8 amendments thereto, of this act; and

9 (C) that all liabilities for wages, employee benefit plan premiums,
10 federal, state and local withholding taxes, unemployment taxes and work-
11 ers' compensation premiums incurred during the previous fiscal year have
12 been paid.

13 (b) An applicant may apply with the department for an extension of
14 time to comply with the requirements of subsection (a)(2) of this section,
15 but any such request must be accompanied by a letter from the inde-
16 pendent certified public accountant stating the reasons for the delay and
17 the anticipated date at which the attestation required by this subsection
18 will be submitted to the department.

19 (c) The department shall audit the bank accounts of the PEO at least
20 annually to verify that funds are maintained to cover all client obligations.

21 Sec. 7. (a) The department shall maintain a list of professional em-
22 ployer organizations licensed under this act.

23 (b) The department may prescribe forms necessary to promote the
24 efficient administration of this act.

25 (c) All records, reports and other information obtained from a PEO
26 under this act, except to the extent necessary for the proper administra-
27 tion of this act by the department shall be open to public inspection.

28 Sec. 8. (a) No fee charged pursuant to this act shall exceed the
29 amount reasonably necessary for the administration of this act. The
30 amount of such fees shall be set by the commissioner as follows:

31 (1) Upon filing an initial license application under this act, a PEO
32 shall pay an initial fee in an amount not to exceed \$5,000.

33 (2) Upon each annual renewal of a license under this act, a PEO shall
34 pay a renewal fee in an amount not to exceed \$5,000.

35 (b) There is hereby established in the state treasury the professional
36 organization licensing fund which shall be administered by the commis-
37 sioner. All expenditures from the fund shall be made in accordance with
38 appropriation acts upon warrants of the director of accounts and reports
39 issued pursuant to vouchers approved by the commissioner.

40 All moneys received by the commissioner under this section shall be
41 deposited in the state treasury at least monthly in accordance with pro-
42 visions of K.S.A. 75-4215, and amendments thereto, and shall be credited
43 to the professional organization licensing fund.

1 Sec. 9. (a) Except as provided in subsections (b), (c) and (d) of this
2 section, a PEO or a PEO group shall maintain, at all times, \$100,000 in
3 working capital, that is current assets minus current liabilities, as defined
4 by generally accepted accounting principles.

5 (b) A PEO or PEO group shall provide to the department a bond,
6 irrevocable letter of credit or securities in an amount determined to be
7 sufficient by the department.

8 (c) A PEO that has not had sufficient operating history to have re-
9 quired an audit of its financial statements shall provide to the department
10 a bond, irrevocable letter of credit or securities in an amount determined
11 to be sufficient by the department.

12 (d) Any PEO or PEO group that does not have positive working capi-
13 tal shall provide to the department a bond, irrevocable letter of credit or
14 securities in an amount determined to be sufficient by the department
15 plus an amount sufficient to cover the deficit in working capital.

16 (e) Any bond submitted pursuant to this subsection shall be held by
17 a depository designated by the department securing payment by the PEO
18 of all taxes, wages, benefits or other entitlement due to or with respect
19 to covered employees, if the PEO does not make such payments when
20 due.

21 Sec. 10. (a) Except as otherwise provided in this act or in the profes-
22 sional employer agreement, in each co-employment relationship:

23 (1) The client shall be entitled to exercise all rights and shall be ob-
24 ligated to perform all duties and responsibilities otherwise applicable to
25 an employer in an employment relationship; and

26 (2) the PEO shall be entitled to exercise only those rights and obli-
27 gated to perform only those duties and responsibilities specifically re-
28 quired by this act or set forth in the professional employer agreement.
29 The rights, duties and obligations of the PEO as co-employer with respect
30 to any covered employee shall be limited to those arising pursuant to the
31 professional employer agreement and this act during the term of co-em-
32 ployment by the PEO of the covered employee.

33 (b) Unless otherwise agreed by the PEO and the client in a profes-
34 sional employer agreement, the client retains the exclusive right to direct
35 and control the covered employees as is necessary to conduct the client's
36 business, to discharge any of the client's fiduciary responsibilities, or to
37 comply with any licensure requirements applicable to the client or to the
38 covered employees.

39 (c) Except as otherwise provided in this act, the co-employment re-
40 lationship between the client and the PEO, and between each co-em-
41 ployer and each covered employee, shall be governed by the professional
42 employer agreement. Each professional employer agreement shall in-
43 clude the following:

- 1 (1) The allocation of rights, duties and obligations as described in
2 subparagraph (a);
- 3 (2) provisions stating that the PEO shall have responsibility to pay
4 wages to covered employees; to withhold, collect, report and remit pay-
5 roll-related and unemployment taxes; and, to the extent the PEO has
6 assumed responsibility in the professional employer agreement, to make
7 payments for employee benefits for covered employees. As used in this
8 section, the term “wages” does not include any obligation between a client
9 and a covered employee for payments beyond or in addition to the cov-
10 ered employee’s salary, draw or regular rate of pay, such as bonuses,
11 commissions, severance pay, deferred compensation, profit sharing or
12 vacation, sick or other paid time off pay, unless the PEO has expressly
13 agreed to assume liability for such payments in the professional employer
14 agreement;
- 15 (3) provisions stating that the PEO shall have a right to hire, discipline
16 and terminate a covered employee, as may be necessary to fulfill the
17 PEO’s responsibilities under this act and the professional employer agree-
18 ment. The client shall have a right to hire, discipline and terminate a
19 covered employee; and
- 20 (4) provisions allocating the responsibility to obtain workers’ com-
21 pensation coverage for covered employees, from a carrier holding a cer-
22 tificate of authority to do business in this state pursuant to K.S.A. 40-201
23 et seq., and amendments thereto, and otherwise in compliance with all
24 applicable requirements, to either the client or the PEO.
- 25 (d) With respect to each professional employer agreement entered
26 into by a PEO, the PEO shall provide written notice to each covered
27 employee affected by the agreement of the terms of the co-employment
28 relationship between and among the PEO, the client and the covered
29 employee, within seven days of the effective date of the agreement and
30 the PEO shall provide written notice to each covered employee of any
31 changes, modifications or amendments, including termination of the
32 agreement, within seven days of the effective date of such change, mod-
33 ification, amendment or termination.
- 34 (e) Notwithstanding any other provision in this act or in the profes-
35 sional employer agreement, any requirement under state or federal law
36 that imposes a duty on an employee to take action to secure their rights
37 or to provide notice to their employer is deemed satisfied if the employee
38 takes such action with or provides such notice to either the PEO or the
39 client.
- 40 (f) Notwithstanding any other provision in this act or in the profes-
41 sional employer agreement, co-employers are jointly and severally liable
42 for acts of the PEO and the acts of the client, except that the professional
43 employer agreement may provide a right of indemnity to the PEO for

1 the errors and omissions of the client and a right of indemnity to the
2 client for the errors and omissions of the PEO.

3 (g) Except to the extent otherwise expressly provided by the appli-
4 cable professional employer agreement:

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

7 (2) a client shall be solely responsible for directing, supervising, train-
8 ing and controlling the work of the covered employees with respect to
9 the business activities of the client and solely responsible for the acts,
10 errors or omissions of the covered employees with regard to such activi-
11 ties; and

12 (3) nothing in this subsection shall serve to limit any contractual lia-
13 bility or obligation specifically provided in the written professional em-
14 ployer agreement.

15 (h) Covered employees whose services are subject to sales tax shall
16 be deemed the employees of the client for purposes of collecting and
17 levying sales tax on the services performed by the covered employee.
18 Nothing contained in this act shall relieve a client of any sales tax liability
19 with respect to its goods or services.

20 (i) Any tax assessed on a per capita or per employee basis shall be
21 assessed against the client for covered employees.

22 (j) In the case of tax imposed or calculated upon the basis of total
23 payroll, the professional employer organization shall be eligible to apply
24 any small business allowance or exemption available to the client for the
25 covered employees for purpose of computing the tax.

26 Sec. 11. (a) A professional employer organization or its representa-
27 tive shall not sell, solicit or negotiate insurance unless licensed as an in-
28 surance agent or insurance producer pursuant to K.S.A. 2008 Supp. 40-
29 4901 et seq., and amendments thereto.

30 (b) A PEO that provides insurance to clients is selling, soliciting and
31 negotiating insurance. Such insurance must be provided on separate pol-
32 icies in the client's name.

33 Sec. 12. (a) A client and a PEO shall each be deemed a co-employer
34 for purposes of sponsoring retirement and welfare benefit plans for its
35 covered employees.

36 (b) A professional employer agreement may not require the partici-
37 pation of a client in a plan of workers' compensation coverage under a
38 multiple coordinated policy provided by a professional employer organi-
39 zation for the covered employees and nothing in this act shall require the
40 participation of a client in any retirement or welfare benefit plan spon-
41 sored by a PEO for the benefit of covered employees.

42 (c) Any welfare benefit plan providing medical, surgical, hospital,
43 sickness, accident or health benefits that is offered to the covered em-

1 ployees of a single PEO shall be underwritten by an insurer authorized
2 to transact the business of accident and health insurance in the state of
3 Kansas and shall be treated as if it were a trust agreement or an association
4 of small employers pursuant to K.S.A. 40-2209 et seq., and amendments
5 thereto. Nothing herein shall allow a PEO to treat all covered employees
6 as a single employer group or to self-insure covered employees as a single
7 employer group.

8 Sec. 13. (a) The responsibility to obtain workers' compensation cov-
9 erage for covered employees from an insurer licensed to do business in
10 this state pursuant to K.S.A. 40-201 et seq., and amendments thereto,
11 and in compliance with all applicable law shall be specifically allocated in
12 the professional employer agreement to either the client or the PEO.

13 (b) Nothing in this act shall require the participation of a client in
14 any plan of workers' compensation coverage provided by a professional
15 employer organization for the benefit of covered employees, if the client
16 has obtained workers' compensation coverage for the covered employees
17 and employees of the client who are not covered employees subject to a
18 professional employer agreement on a direct purchase basis from an in-
19 surer licensed to do business in this state pursuant to K.S.A. 40-201 et
20 seq., and amendments thereto.

21 (c) If covered employees are covered by a workers' compensation
22 policy purchased by a client on a direct purchase basis, and are not cov-
23 ered by a workers' compensation policy issued in the name of the PEO,
24 the client shall provide a certificate of insurance to the PEO evidencing
25 that workers' compensation coverage has been obtained for covered em-
26 ployees by the client.

27 (d) The requirements contained in subsection (a) of this section shall
28 be fulfilled in one of the following ways:

29 (1) The client obtains workers' compensation coverage on a direct
30 purchase basis pursuant to K.S.A. 44-501 et seq., and amendments
31 thereto, covering all of the client's covered employees, subject to the same
32 requirements and conditions as if the client were the sole employer of its
33 PEO co-employees; or

34 (2) the PEO purchases a separate workers' compensation policy, is-
35 sued pursuant to K.S.A. 44-501 et seq., and amendments thereto, from
36 an insurer holding a certificate of authority to do business in this state
37 providing workers' compensation coverage for the covered employees of
38 each client on a multiple coordinated policy basis listing the PEO as "labor
39 contractor for" each client or group of affiliated clients.

40 (e) The PEO shall provide any information requested by the depart-
41 ment relating to its contractual provisions including, but not limited to,
42 inception and termination of PEO agreements with clients, the methods
43 by which its workers' compensation costs are determined and allocated

1 and any other information relevant to the PEO's workers' compensation
2 coverage arrangements and any other insurance provided by the PEO to
3 its clients.

4 (f) PEO's shall separately bill their clients for each type of insurance
5 provided, reflecting the premium charged by the insurers for that client.

6 (g) All records, reports and other information obtained from a PEO
7 under this subsection, for the proper administration of this act by the
8 department shall be open to public inspection.

9 (h) The Kansas workers' compensation insurance plan shall issue
10 workers' compensation policies for the covered employees of a PEO on
11 a multiple coordinated policy basis in accordance with plan rules.

12 Sec. 14. (a) For the purposes of K.S.A. 44-701 et seq., and amend-
13 ments thereto, covered employees of a licensed PEO are considered the
14 employees of the PEO, which shall be responsible for the payment of
15 contributions, penalties and interest on wages paid by the PEO to its
16 covered employees during the term of the applicable professional em-
17 ployer agreement, except that an individual proprietor, partner or cor-
18 porate officer, who is a shareholder or member of the board of directors
19 of the client company, shall not be considered a covered employee of the
20 PEO.

21 (b) A professional employer organization shall be liable for contri-
22 butions on wages paid by the professional employer organization to cov-
23 ered employees.

24 (c) The professional employer organization shall keep separate re-
25 cords and submit separate quarterly contributions and wage reports for
26 each client company.

27 (d) The PEO shall report and pay all required contributions for cov-
28 ered employees to the unemployment compensation fund using the state
29 employer account number and the contribution rate of the PEO.

30 (e) On the termination of a contract between a PEO and a client
31 company or the failure by a PEO to submit reports or make tax payments
32 as required by K.S.A. 44-701 et seq., and amendments thereto, the client
33 shall be treated as a new employer without a previous experience record
34 unless that client is otherwise eligible for an experience rating.

35 (f) The provisions of this section shall not be applicable to temporary
36 help services which provide temporary workers to employers on a tem-
37 porary help basis, provided the temporary help services agencies are liable
38 as employers for the payment of contributions on wages paid to temporary
39 workers so employed.

40 (g) This section shall be construed as part of the employment security
41 law.

42 Sec. 15. The following shall not be deemed to be professional em-
43 ployer organizations or the providing of professional employment services

1 for purposes of this act:

2 (a) Arrangements wherein a person, whose principal business activity
3 is not entering into professional employer arrangements and which does
4 not hold itself out as a PEO, shares employees with a commonly owned
5 company within the meaning of section 414(b) and (c) of the internal
6 revenue code of 1986, as amended;

7 (b) independent contractor arrangements by which a person assumes
8 responsibility for the product produced or service performed by the per-
9 son or agents of such persons and retains and exercises primary direction
10 and control over the work performed by the individuals whose services
11 are supplied under the arrangements; or

12 (c) persons providing temporary help services.

13 Sec. 16. (a) It shall be the duty of the department when informed of
14 any violation of section 4, and amendments thereto, of this act, to inves-
15 tigate the allegation of the complaint.

16 (b) The commissioner may, after notice and an opportunity for a
17 hearing pursuant to the Kansas administrative procedure act, refuse to
18 renew or may suspend or revoke a professional employer organization's
19 license, or may place the licensee on probation for a period not to exceed
20 one year, or may impose an administrative penalty in an amount not to
21 exceed \$10,000 for each material violation of this act, and may issue a
22 cease and desist order if it is found after a hearing that:

23 (1) The professional employer organization has knowingly provided
24 false or fraudulent information, or has knowingly made a material mis-
25 representation to the department, or other governmental agency in con-
26 junction with any license, renewal, or in any report required under this
27 act;

28 (2) the professional employer organization or a controlling person of
29 a PEO has been convicted of a crime that relates to the operation of a
30 PEO, relates to fraud or deceit, or the ability of the licensee or a con-
31 trolling person of a licensee to operate a PEO; or

32 (3) the professional employer organization has committed a willful
33 violation of this act or any order or rule and regulation issued by the
34 department under this act.

35 Sec. 17. The commissioner may adopt, amend and revoke rules and
36 regulations governing the administration and enforcement of this act.

37 Sec. 18. If any provision of this act or the application thereof to any
38 person or circumstance is held invalid, the invalidity does not affect other
39 provisions or applications of this act which can be given effect without
40 the invalid provision or application, and to this end the provisions of this
41 act are severable.

42 Sec. 19. This act shall take effect and be in force from and after its
43 publication in the Kansas register.