

## HOUSE BILL No. 2790

By Committee on Commerce, Labor and Economic Development

Requested by Scott Schneider on behalf of the National Association of Professional Employer Organizations

2-9

1 AN ACT concerning labor and employment; relating to professional  
2 employer organizations; transferring registration requirements, related  
3 compliance oversight and enforcement authority for such organizations  
4 from the commissioner of insurance to the secretary of labor; requiring  
5 the filing of initial and renewal registration applications, reports,  
6 financial statements and other assurance documents with the secretary;  
7 providing for fees to be submitted to the secretary and granting the  
8 secretary responsibility over the professional employer organization fee  
9 fund; ensuring that welfare benefit plans offered by professional  
10 employer organizations to employees and covered employees are  
11 treated as a single employer welfare benefit plan for purposes of state  
12 law; amending K.S.A. 44-1702, 44-1704, 44-1705, 44-1706, 44-1708,  
13 44-1709 and 44-1710 and repealing the existing sections.

14

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

16 Section 1. K.S.A. 44-1702 is hereby amended to read as follows: 44-  
17 1702. As used in K.S.A. 44-1701 through 44-1711, and amendments  
18 thereto:

19 (a) "Client" means any person who enters into a professional  
20 employer agreement with a professional employer organization.

21 (b) "Co-employer" means either a professional employer organization  
22 or a client.

23 (c) "Co-employment relationship" means a relationship which is  
24 intended to be an ongoing relationship rather than a temporary or project  
25 specific relationship, and wherein the rights, duties and obligations of an  
26 employer which arise out of an employment relationship have been  
27 allocated between the employer and a professional employer organization  
28 as co-employers pursuant to a professional employer agreement entered  
29 into in accordance with the provisions of K.S.A. 44-1701 through 44-1711,  
30 and amendments thereto. Under a co-employment relationship:

31 (1) The professional employer organization is entitled to enforce only  
32 those employer rights, and is subject to only those employer obligations,  
33 that are specifically allocated to the professional employer organization by  
34 the professional employer agreement or by the provisions of K.S.A. 44-

1 1701 through 44-1711, and amendments thereto;

2 (2) the client is entitled to enforce those employer rights, and is  
3 obligated to provide and perform those employer obligations, that are  
4 allocated to such client by the professional employer agreement or by the  
5 provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto;  
6 and

7 (3) the client also is entitled to enforce any employer right, and is  
8 obligated to perform any obligation of an employer, that is not specifically  
9 allocated to the professional employer organization by the professional  
10 employer agreement or by the provisions of K.S.A. 44-1701 through 44-  
11 1711, and amendments thereto.

12 ~~(d) "Commissioner" means the commissioner of insurance.~~

13 ~~(e)~~ (1) "Covered employee" means an individual having a co-  
14 employment relationship with a professional employer organization and a  
15 client, who has received written notice of the co-employment relationship  
16 with the professional employer organization and the client, and such co-  
17 employment relationship was entered into pursuant to a professional  
18 employer agreement entered into in accordance with the provisions of  
19 K.S.A. 44-1701 through 44-1711, and amendments thereto.

20 (2) The term "covered employee" shall include individuals who are  
21 officers, directors, shareholders, partners or managers of the client, or  
22 members of a limited liability company that is a client, if:

23 (A) The professional employer organization and the client have  
24 expressly agreed in the professional employer agreement that such  
25 individuals are covered employees;

26 (B) such individuals satisfy the provisions of paragraph (1); and

27 (C) such individuals act as operational managers or perform day-to-  
28 day operational services for the client.

29 ~~(f) "Department" means the department of insurance.~~

30 ~~(g)~~(e) "Person" means any individual, partnership, corporation,  
31 limited liability company, association or any other form of legally  
32 recognized entity.

33 ~~(h)~~(f) "Professional employer agreement" means a written contract  
34 entered into between a client and a professional employer organization that  
35 provides:

36 (1) For the co-employment of covered employees;

37 (2) for the allocation of employer rights and obligations between the  
38 client and the professional employer organization with respect to covered  
39 employees; and

40 (3) for the professional employer organization and the client to  
41 assume the responsibilities required by the provisions of K.S.A. 44-1701  
42 through 44-1711, and amendments thereto.

43 ~~(i)~~(g) (1) "Professional employer organization" means any person

1 engaged in the business of providing professional employer services. A  
2 person engaged in the business of providing professional employer  
3 services shall be considered a "professional employer organization"  
4 regardless of such person's use of the term staff leasing company,  
5 administrative employer, employee leasing company or any name other  
6 than professional employer organization in describing such person's  
7 business.

8 (2) For purposes of K.S.A. 44-1701 through 44-1711, and  
9 amendments thereto, the following shall not be considered a "professional  
10 employer organization," or as providing "professional employment  
11 services":

12 (A) Arrangements wherein a person, whose principal business  
13 activity is not entering into professional employer agreements, and which  
14 does not hold itself out as a professional employer organization, shares  
15 employees with a commonly owned company within the meaning of  
16 section 414(b) and (c) of the internal revenue code;

17 (B) independent contractor arrangements by which a person assumes  
18 responsibility for the product produced or service performed by such  
19 person or such person's agents and retains and exercises primary direction  
20 and control over the work performed by the individuals whose services are  
21 supplied under such arrangements; and

22 (C) providing temporary help services.

23 ~~(h)~~ "Professional employer group" means two or more professional  
24 employer organizations that are majority owned or commonly controlled  
25 by the same entity, parent or controlling person.

26 ~~(i)~~ "Professional employer services" means the service of entering  
27 into co-employment relationships.

28 ~~(j)~~ "Registrant" means a professional employer organization  
29 registered under the provisions of K.S.A. 44-1701 through 44-1711, and  
30 amendments thereto.

31 *(k) "Secretary" means the secretary of state.*

32 ~~(m)~~ *(l)* "Temporary help services" means services consisting of a  
33 person:

34 (1) Recruiting and hiring such person's own employees;

35 (2) locating other organizations that need the services of such  
36 employees;

37 (3) assigning such employees:

38 (A) To perform work at or services for such other organizations to  
39 support or supplement such other organizations' workforces;

40 (B) to provide assistance in special work situations, including  
41 employee absences, skill shortages or seasonal workloads; or

42 (C) to perform special assignments or projects; and

43 (4) customarily attempting to reassign such employees to other

1 organizations when such employees finish an assignment.

2 ~~(n)~~(m) "Working capital" means current assets less current liabilities,  
3 as such terms are used by generally accepted accounting principles.

4 Sec. 2. K.S.A. 44-1704 is hereby amended to read as follows: 44-  
5 1704. (a) A person engaged in the business of providing professional  
6 employer services pursuant to co-employment relationships in which all or  
7 a majority of the employees of a client are covered employees shall be  
8 registered pursuant to this section.

9 (b) A person who is not registered pursuant to this section shall not  
10 offer or provide professional employer services in this state, and shall not  
11 use the names PEO, professional employer organization, staff leasing  
12 company, employee leasing company, administrative employer or any  
13 other name or title representing professional employer services.

14 (c) Each applicant for registration shall submit an application to the  
15 ~~commissioner~~ *secretary* in such form and manner as prescribed by the  
16 ~~commissioner~~ *secretary*. The application shall contain the following  
17 information:

18 (1) The name or names under which the professional employer  
19 organization conducts business;

20 (2) the address of the principal place of business of the professional  
21 employer organization, and the address of each office the professional  
22 employer organization maintains in this state;

23 (3) the professional employer organization's taxpayer or employer  
24 identification number;

25 (4) a list, by jurisdiction, of each name under which the professional  
26 employer organization has operated in the preceding five years, including  
27 any alternative names, names of predecessors and, if known, successor  
28 business entities;

29 (5) a statement of ownership that shall include the name and evidence  
30 of the business experience of any person that, individually, or acting in  
31 concert with one or more other persons, owns or controls, directly or  
32 indirectly, 15% or more of the equity interest of the professional employer  
33 organization;

34 (6) a statement of management that shall include the name and  
35 evidence of the business experience of any individual who serves as  
36 president, chief executive officer or otherwise has the authority to act as  
37 senior executive officer of the professional employer organization; and

38 (7) a financial statement setting forth the financial condition of the  
39 professional employer organization or professional employer group that  
40 shall comply with the provisions of subsection (h).

41 ~~(d)(1) Each professional employer organization operating within this~~  
42 ~~state as of the effective date of this act shall complete its initial registration~~  
43 ~~not later than 60 days after the effective date of this act. Such initial~~

1 registration shall be valid until 60 days from the end of the professional  
2 employer organization's first fiscal year that is more than one year after the  
3 effective date of this act.

4 (2) Each professional employer organization not operating within this  
5 state as of the effective date of this act shall complete its initial registration  
6 prior to initiating operations within this state. If a professional employer  
7 organization not registered in this state becomes aware that an existing  
8 client, not based in this state, has employees and operations in this state,  
9 the professional employer organization shall either decline to provide  
10 professional employer services for those employees, or notify the  
11 ~~commissioner~~ secretary within five business days of the professional  
12 employer organization's knowledge of this fact and file a limited  
13 registration application pursuant to subsection (g), or a full registration if  
14 there are more than 50 covered employees employed by such client. The  
15 ~~commissioner~~ secretary may issue an interim operating permit for the  
16 period of time the application is pending if the professional employer  
17 organization is currently registered or licensed by another state and the  
18 ~~commissioner~~ secretary determines it is in the best interests of the  
19 potential covered employees.

20 (e) A registrant's application shall automatically expire 120 days after  
21 the end of the registrant's fiscal year. Within 120 days after the end of a  
22 registrant's fiscal year, such registrant shall renew its registration by  
23 notifying the ~~commissioner~~ secretary of any changes in the information  
24 provided in such registrant's most recent registration or renewal. A  
25 registrant's existing registration shall remain in effect for the period of time  
26 the renewal application is pending.

27 (f) Professional employer organizations in a professional employer  
28 group may satisfy any reporting and financial requirements of this section  
29 on a combined or consolidated basis, provided that each member of the  
30 professional employer group guarantees the financial capacity obligations  
31 required by K.S.A. 44-1706, and amendments thereto, of each other  
32 member of the professional employer group. In the case of a professional  
33 employer group that submits a combined or consolidated audited financial  
34 statement, including entities that are not professional employer  
35 organizations or that are not in the professional employer group, the  
36 controlling entity of the professional employer group under the  
37 consolidated or combined statement must guarantee the obligations of the  
38 professional employer organizations in the professional employer group.

39 (g) (1) A professional employer organization is eligible for a limited  
40 registration if such professional employer organization:

41 (A) Submits a written request for limited registration in such form  
42 and manner as prescribed by the ~~commissioner~~ secretary;

43 (B) is domiciled outside this state and is licensed or registered as a

1 professional employer organization in another state;

2 (C) does not maintain an office in this state or directly solicit clients  
3 located or domiciled within this state; and

4 (D) does not have more than 50 covered employees employed or  
5 domiciled in this state on any given day.

6 (2) A limited registration is valid for one year and may be renewed  
7 thereafter.

8 (3) A professional employer organization requesting limited  
9 registration under this subsection shall provide the ~~commissioner~~ *secretary*  
10 with such information and documentation as required by the ~~commissioner~~  
11 *secretary* to show that the professional employer organization qualifies for  
12 a limited registration.

13 (4) The provisions of K.S.A. 44-1706, and amendments thereto, shall  
14 not apply to applicants for limited registration.

15 (h) At the time of initial registration, the applicant shall submit the  
16 most recent audit of the applicant or such applicant's parent holding  
17 company. The most recent audit shall not be older than 13 months.  
18 Thereafter, a professional employer organization or professional employer  
19 group shall file on an annual basis, within 120 days after the end of the  
20 professional employer organization's or parent holding company's fiscal  
21 year, a succeeding audit and renewal registration application. An applicant  
22 may apply to the ~~commissioner~~ *secretary* for an extension of time to  
23 submit such audit, but any such request shall be accompanied by a letter  
24 from the auditor stating the reasons for the delay and the anticipated audit  
25 completion date. For the initial application, if the closing date of the  
26 audited financial statements required by this section is older than three  
27 months from the date of the application, the application also shall include  
28 updated, unaudited financial statements for the most recent quarter. The  
29 financial statement shall be prepared in accordance with generally  
30 accepted accounting principles and audited by an independent certified  
31 public accountant licensed to practice in the jurisdiction in which such  
32 accountant is located and shall be without qualification as to the going  
33 concern status of the professional employer organization. A professional  
34 employer group may submit combined or consolidated audited financial  
35 statements to meet the requirements of this section. A professional  
36 employer organization that has not had sufficient operating history to have  
37 audited financial statements based upon at least 12 months of operating  
38 history shall meet the financial capacity requirements of subsection (f) and  
39 present financial statements reviewed by a certified public accountant.

40 (i) The ~~department~~ *secretary* shall maintain a list of professional  
41 employer organizations registered under this section, and such list shall be  
42 readily available to the public by electronic or other means.

43 (j) The ~~commissioner~~ *secretary*, to the extent feasible, shall permit the

1 acceptance of electronic filings, including *initial registration and renewal*  
2 *applications, documents, reports and other filings required by the*  
3 ~~commissioner~~ *secretary* under this section. The ~~commissioner~~ *secretary*  
4 may provide for the acceptance of electronic filings and ~~other assurance~~  
5 ~~documents~~ *registration information for initial registration and renewal*  
6 *applications, reports and other assurance documents* by an independent  
7 and qualified ~~entity~~ *assurance organization* approved by the ~~commissioner~~  
8 *secretary* that provides satisfactory assurance of compliance acceptable to  
9 the ~~commissioner~~ *secretary* consistent with, or in lieu of, the requirements  
10 of this section and K.S.A. 44-1706, and amendments thereto. The  
11 ~~commissioner~~ *secretary* shall permit a professional employer organization  
12 to authorize such ~~entity~~ *assurance organization* approved by the  
13 ~~commissioner~~ *secretary* to act on the professional employer organization's  
14 behalf, including electronic filings *and provisions of registration*  
15 *information for initial registration and renewal applications* and payment  
16 of registration fees in complying with the registration requirements of ~~this~~  
17 ~~section~~ *subsections (c) through (h)*. Use of such an approved ~~entity~~  
18 *assurance organization* shall be optional and not mandatory for a  
19 registrant. Nothing in this subsection shall limit or change the  
20 ~~commissioner's~~ *secretary's* authority to register or terminate registration of  
21 a professional employer organization or to investigate or enforce any  
22 provision of K.S.A. 44-1701 through 44-1711, and amendments thereto.

23 Sec. 3. K.S.A. 44-1705 is hereby amended to read as follows: 44-  
24 1705. (a) Upon filing an initial application for registration, a professional  
25 employer organization shall pay a fee in an amount not to exceed \$1,000.

26 (b) Upon filing a renewal application for registration, a professional  
27 employer organization shall pay a fee in an amount not to exceed \$500.

28 (c) Upon filing an initial or a renewal application for limited  
29 registration, a professional employer organization shall pay a fee in an  
30 amount not to exceed \$500.

31 (d) Upon filing an initial or a renewal application for registration, a  
32 professional employer group shall pay a fee in an amount determined by  
33 the ~~commissioner~~ *secretary* and adopted by rules and regulations.

34 (e) The ~~commissioner~~ *secretary* shall adopt rules and regulations  
35 establishing the fees to be charged pursuant to this section in such amounts  
36 as deemed reasonably necessary by the ~~commissioner~~ *secretary* for the  
37 administration of the provisions of K.S.A. 44-1701 through 44-1711, and  
38 amendments thereto, subject to the limitations on fee amounts set forth in  
39 subsections (a), (b) and (c).

40 (f) There is hereby created the professional employer organization fee  
41 fund. The ~~commissioner~~ *secretary* shall remit all moneys received from  
42 fees or penalties to the state treasurer in accordance with the provisions of  
43 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such

1 remittance, the state treasurer shall deposit the entire amount in the state  
2 treasury to the credit of the professional employer organization fee fund.  
3 All expenditures from the professional employer organization fee fund  
4 shall be for the purposes of the administration of the provisions of K.S.A.  
5 44-1701 through 44-1711, and amendments thereto, and shall be made in  
6 accordance with appropriation acts upon warrants of the director of  
7 accounts and reports issued pursuant to vouchers approved by the  
8 ~~commissioner~~ *secretary*, or the ~~commissioner's~~ *secretary's* designee.

9 Sec. 4. K.S.A. 44-1706 is hereby amended to read as follows: 44-  
10 1706. Except as provided by ~~subsections (g) and (j)~~ of K.S.A. 44-1704(*g*)  
11 *and (j)*, and amendments thereto, each professional employer organization,  
12 or collectively each professional employer group shall either:

13 (a) Maintain positive working capital upon registration as reflected in  
14 the financial statements submitted to the ~~commissioner~~ *secretary* with the  
15 initial registration application and each renewal application; or

16 (b) for a professional employer organization or professional employer  
17 group that does not have sufficient positive working capital as required in  
18 subsection (a), submit a bond, irrevocable letter of credit or securities with  
19 a minimum market value in an amount equal to the sum of the amount that  
20 would be necessary for such professional employer organization or  
21 professional employer group to comply with subsection (a) plus \$100,000  
22 to the ~~commissioner~~ *secretary* at such time as the professional employer  
23 organization or professional employer group does not have sufficient  
24 working capital. Such bond shall be held by a depository designated by the  
25 ~~commissioner~~ *secretary* securing payment by the professional employer  
26 organization of all taxes, wages, benefits or other entitlement due to or  
27 with respect to covered employees, if the professional employer  
28 organization does not make such payments when due.

29 Sec. 5. K.S.A. 44-1708 is hereby amended to read as follows: 44-  
30 1708. A client and a professional employer organization shall each be  
31 deemed an employer under the laws of this state for purposes of  
32 sponsoring retirement and employee welfare benefit plans for its covered  
33 employees. *A fully-insured welfare benefit plan offered by a professional*  
34 *employer organization to its employees and covered employees shall be*  
35 *treated under the laws of this state as a single employer welfare benefit*  
36 *plan.*

37 Sec. 6. K.S.A. 44-1709 is hereby amended to read as follows: 44-  
38 1709. (a) It shall be a violation of the provisions of K.S.A. 44-1701  
39 through 44-1711, and amendments thereto:

40 (1) For a person to knowingly offer or provide professional employer  
41 services or use the names PEO, professional employer organization, staff  
42 leasing, employee leasing, administrative employer or other title  
43 representing professional employer services without registering in

1 accordance with K.S.A. 44-1704, and amendments thereto;

2 (2) for a person to knowingly provide false or fraudulent information  
3 to the ~~commissioner~~ *secretary* in conjunction with any registration  
4 application, renewal or in any report required under the provisions of  
5 K.S.A. 44-1704 or 44-1706, and amendments thereto;

6 (3) for a person to knowingly make a material misrepresentation to  
7 the ~~commissioner~~ *secretary*, or other governmental agency to which such  
8 person is required to submit a report or information;

9 (4) for a professional employer organization or a controlling person  
10 of a professional employer organization to be convicted of a crime:

11 (A) That relates to the operation of a professional employer  
12 organization;

13 (B) that relates to the ability of the professional employer  
14 organization or a controlling person of a professional employer  
15 organization to operate a professional employer organization; or

16 (C) pursuant to 18 U.S.C. § 1033; or

17 (5) for a person to willfully violate any provision of K.S.A. 44-1701  
18 through 44-1711, and amendments thereto, or any rule or regulation  
19 adopted by the ~~commissioner~~ *secretary* pursuant thereto.

20 (b) Upon a finding, and after notice and an opportunity for a hearing,  
21 that a professional employer organization, or a controlling person of a  
22 professional employer organization, or a person offering professional  
23 employer services has committed a violation under this section, the  
24 ~~commissioner~~ *secretary* may:

25 (1) Deny the application for registration;

26 (2) revoke, restrict or refuse to renew a registration;

27 (3) impose a civil fine in an amount not to exceed \$10,000 for each  
28 material violation of the provisions of K.S.A. 44-1701 through 44-1711,  
29 and amendments thereto;

30 (4) place the registrant on probation for such period of time and  
31 subject to such conditions as the ~~commissioner~~ *secretary* shall specify; or

32 (5) issue an order to cease and desist those professional employer  
33 organization activities and services specified in such order.

34 (c) The provisions of this section shall be subject to the Kansas  
35 judicial review act.

36 Sec. 7. K.S.A. 44-1710 is hereby amended to read as follows: 44-  
37 1710. The ~~commissioner~~ *secretary* is hereby authorized to and shall adopt  
38 such rules and regulations as the ~~commissioner~~ *secretary* deems necessary  
39 to implement and enforce the provisions of K.S.A. 44-1701 through 44-  
40 1711, and amendments thereto.

41 Sec. 8. K.S.A. 44-1702, 44-1704, 44-1705, 44-1706, 44-1708, 44-  
42 1709 and 44-1710 are hereby repealed.

43 Sec. 9. This act shall take effect and be in force from and after its

- 1 publication in the statute book.