

The House Committee on Industry and Labor offers the following substitute to HB 397:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to provide that a professional employer organization providing workers'
3 compensation for an employee of a coemployer must provide coverage for all employees of
4 such coemployer; to revise the definition of the terms "professional employer organization"
5 and "employing unit"; to make other conforming changes to cross-references; to provide for
6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
10 is amended by revising Code Section 34-7-6, relating to professional employer organizations
11 and rights, powers, and responsibilities, as follows:

12 "34-7-6.

13 (a) As used in this Code section, the term 'professional employer organization' means an
14 ~~employee leasing company as defined in Code Section 34-8-32~~ employer that has
15 established a coemployment relationship with another employer, pays the wages of the
16 employees of the coemployer, reserves a right of direction and control over the employees

H. B. 397 (SUB)

17 of the coemployer, and assumes responsibility for the withholding and payment of payroll
18 taxes of the coemployer.

19 (b) A professional employer organization may collect information to evaluate costs; may
20 obtain life, accident and sickness, disability income, workers' compensation, and other
21 types of insurance coverage; may establish retirement plans; may have other types of
22 employee benefits; and may discuss such benefits with prospective coemployers and ~~their~~
23 ~~employees~~ the employees of the coemployer; provided, however, that if the professional
24 employer organization provides workers' compensation coverage for any employee of the
25 coemployer, the professional employer organization shall be responsible for and shall
26 provide workers' compensation coverage for all of the coemployer's employees who are
27 subject to Chapter 9 of this title.

28 (c) A coemployer of a professional employer organization shall retain sufficient direction
29 and control over the employees involved in a coemployment relationship as is necessary
30 to conduct its business operations and fulfill its obligations to such employees.

31 (d) Unless otherwise agreed in writing, such coemployer shall be considered to be the sole
32 employer of such employees for licensing purposes, provided that nothing contained in this
33 Code section shall be deemed to prohibit a professional employer organization and its
34 coemployer from agreeing that the professional employer organization shall be considered
35 to be an employer for licensing purposes. The professional employer organization shall
36 give written notice of such an agreement to the appropriate licensing agency and to the
37 employees involved.

38 ~~(d)~~(e) It is the intent of this Code section that professional employer organizations shall
39 be considered to be employers under this title and are required to comply with the
40 provisions of Code Sections ~~34-8-32~~, 34-8-34, and 34-8-172. Professional employer
41 organizations and their coemployer clients are entitled to exclusive remedy under Code
42 Section 34-9-11.

43 (f) Individuals who perform services for temporary help contracting firms as that term is
44 defined in Code Section 34-8-46 shall not be considered employees of a professional
45 employer organization."

46 **SECTION 2.**

47 Said title is further amended by revising Code Section 34-8-34, relating to employing unit,
48 as follows:

49 "34-8-34.

50 As used in this chapter, the term 'employing unit' means any individual, the legal
51 representative of a deceased individual, or any type of organization, including any
52 partnership, association, trust, estate, joint-stock company, insurance company, or
53 corporation, whether domestic or foreign, employee leasing company, professional
54 employer organization, common paymaster, or the receiver, trustee in bankruptcy, trustee,
55 or successor thereof which has or had in its employ one or more individuals performing
56 services for it within this state. Each individual performing services within this state for
57 any employing unit which maintains two or more separate establishments within this state
58 shall be deemed to be employed by a single employing unit for all the purposes of this
59 chapter. Each individual employed to perform or to assist in performing the work of any
60 agent or employee of an employing unit shall be deemed to be employed by such
61 employing unit for all the purposes of this chapter, whether such individual was hired or
62 paid directly by such employing unit or by such agent or employee, provided the
63 employing unit had actual or constructive knowledge of such work."

64 **SECTION 3.**

65 Said title is further amended by revising Code Section 34-8-172, relating to surety bond
66 required of employee leasing company, as follows:

67 "34-8-172.
68 The Commissioner shall require any employee leasing company, as defined in Code
69 Section 34-8-32, and any professional employer organization, as defined in Code
70 Section 34-7-6, to post a surety bond or such equivalent financial securities as approved
71 by the Commissioner in such an amount as needed to cover the total of any potential tax
72 liability which may reasonably be expected to be incurred by such employer. In the event
73 an employee leasing company or a professional employer organization is unable to procure
74 such bond or security, the employee leasing company or the professional employer
75 organization may report such employees as being in the employment of its client
76 employers, notwithstanding any provision of Code Section 34-8-32 to the contrary."

77 **SECTION 4.**

78 Said title is further amended in Code Section 34-9-11, relating to exclusivity of rights and
79 remedies granted to employee under chapter and immunity granted to construction design
80 professionals, by revising subsection (c) as follows:

81 "(c)(1) The immunity provided by this subsection shall apply and extend to the
82 businesses using the services of a temporary help contracting firm, as such term is
83 defined in Code Section 34-8-46, a professional employer organization, as such term is
84 defined in Code Section 34-7-6, or an employee leasing company, as such term is defined
85 in Code Section 34-8-32, when the benefits required by this chapter are provided by
86 either the temporary help contracting firm, the professional employer organization as
87 provided for in subsection (b) of Code Section 34-7-6, or the employee leasing company
88 or the business using the services of either any such firm, organization, or company.

89 (2) A temporary help contracting firm, professional employer organization, or an
90 employee leasing company shall be deemed to be a statutory employer for the purposes
91 of this chapter."

92

SECTION 5.

93 All laws and parts of laws in conflict with this Act are repealed.