

HOUSE BILL No. 2790

AN ACT concerning labor and employment; relating to professional employer organizations; transferring registration requirements, related compliance oversight and enforcement authority for such organizations from the commissioner of insurance to the secretary of state, effective January 1, 2025; requiring the filing of initial and renewal registration applications, reports, financial statements and other assurance documents with the secretary; providing for fees to be submitted to the secretary and granting the secretary responsibility over the professional employer organization fee fund; ensuring that welfare benefit plans offered by professional employer organizations to employees and covered employees are treated as a single employer welfare benefit plan for purposes of state law; amending K.S.A. 44-1702, 44-1704, 44-1705, 44-1706, 44-1708, 44-1709 and 44-1710 and repealing the existing sections.

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

Section 1. On January 1, 2025, K.S.A. 44-1702 is hereby amended to read as follows: 44-1702. As used in K.S.A. 44-1701 through 44-1711, and amendments thereto:

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

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

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

(1) The professional employer organization is entitled to enforce only those employer rights, and is subject to only those employer obligations, that are specifically allocated to the professional employer organization by the professional employer agreement or by the provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto;

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

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

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

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

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

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

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

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

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

~~(g)~~(e) "Person" means any individual, partnership, corporation,

limited liability company, association or any other form of legally recognized entity.

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

- (1) For the co-employment of covered employees;
- (2) for the allocation of employer rights and obligations between the client and the professional employer organization with respect to covered employees; and
- (3) for the professional employer organization and the client to assume the responsibilities required by the provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto.

~~(i)~~(g) (1) "Professional employer organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be considered a "professional employer organization" regardless of such person's use of the term staff leasing company, administrative employer, employee leasing company or any name other than professional employer organization in describing such person's business.

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

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

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

(C) providing temporary help services.

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

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

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

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

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

- (1) Recruiting and hiring such person's own employees;
- (2) locating other organizations that need the services of such employees;
- (3) assigning such employees:
 - (A) To perform work at or services for such other organizations to support or supplement such other organizations' workforces;
 - (B) to provide assistance in special work situations, including employee absences, skill shortages or seasonal workloads; or
 - (C) to perform special assignments or projects; and
- (4) customarily attempting to reassign such employees to other organizations when such employees finish an assignment.

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

principles.

Sec. 2. On January 1, 2025, K.S.A. 44-1704 is hereby amended to read as follows: 44-1704. (a) A person engaged in the business of providing professional employer services pursuant to co-employment relationships in which all or a majority of the employees of a client are covered employees shall be registered pursuant to this section.

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

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

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

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

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

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

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

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

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

~~(d)(1) Each professional employer organization operating within this state as of the effective date of this act shall complete its initial registration not later than 60 days after the effective date of this act. Such initial registration shall be valid until 60 days from the end of the professional employer organization's first fiscal year that is more than one year after the effective date of this act.~~

(2) Each professional employer organization not operating within this state as of the effective date of this act shall complete its initial registration prior to initiating operations within this state. If a professional employer organization not registered in this state becomes aware that an existing client, not based in this state, has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees, or notify the ~~commissioner~~ *secretary* within five business days of the professional employer organization's knowledge of this fact and file a limited registration application pursuant to subsection (g), or a full registration if there are more than 50 covered employees employed by such client. The ~~commissioner~~ *secretary* may issue an interim operating permit for the period of time the application is pending if the professional employer organization is currently

registered or licensed by another state and the ~~commissioner~~ *secretary* determines it is in the best interests of the potential covered employees.

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

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

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

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

(B) is domiciled outside this state and is licensed or registered as a professional employer organization in another state;

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

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

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

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

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

(h) At the time of initial registration, the applicant shall submit the most recent audit of the applicant or such applicant's parent holding company. The most recent audit shall not be older than 13 months. Thereafter, a professional employer organization or professional employer group shall file on an annual basis, within 120 days after the end of the professional employer organization's or parent holding company's fiscal year, a succeeding audit and renewal registration application. An applicant may apply to the ~~commissioner~~ *secretary* for an extension of time to submit such audit, but any such request shall be accompanied by a letter from the auditor stating the reasons for the delay and the anticipated audit completion date. For the initial application, if the closing date of the audited financial statements required by this section is older than three months from the date of the application, the application also shall include updated, unaudited financial statements for the most recent quarter. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is

located and shall be without qualification as to the going concern status of the professional employer organization. A professional employer group may submit combined or consolidated audited financial statements to meet the requirements of this section. A professional employer organization that has not had sufficient operating history to have audited financial statements based upon at least 12 months of operating history shall meet the financial capacity requirements of subsection (f) and present financial statements reviewed by a certified public accountant.

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

(j) The ~~commissioner~~ *secretary*, to the extent feasible, shall permit the acceptance of electronic filings, including *initial registration and renewal* applications, documents, reports and other filings required by the ~~commissioner~~ *secretary* under this section. The ~~commissioner~~ *secretary* may provide for the acceptance of electronic filings and ~~other assurance documents~~ *registration information for initial registration and renewal applications, reports and other assurance documents* by an independent and qualified ~~entity~~ *assurance organization* approved by the ~~commissioner~~ *secretary* that provides satisfactory assurance of compliance acceptable to the ~~commissioner~~ *secretary* consistent with, or in lieu of, the requirements of this section and K.S.A. 44-1706, and amendments thereto. The ~~commissioner~~ *secretary* shall permit a professional employer organization to authorize such ~~entity~~ *assurance organization* approved by the ~~commissioner~~ *secretary* to act on the professional employer organization's behalf, including electronic filings and *provisions of registration information for initial registration and renewal applications* and payment of registration fees in complying with the registration requirements of ~~this section subsections (c) through (h)~~. Use of such an approved ~~entity~~ *assurance organization* shall be optional and not mandatory for a registrant. Nothing in this subsection shall limit or change the ~~commissioner's~~ *secretary's* authority to register or terminate registration of a professional employer organization or to investigate or enforce any provision of K.S.A. 44-1701 through 44-1711, and amendments thereto.

Sec. 3. On January 1, 2025, K.S.A. 44-1705 is hereby amended to read as follows: 44-1705. (a) Upon filing an initial application for registration, a professional employer organization shall pay a fee in an amount not to exceed \$1,000.

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

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

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

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

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

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

Sec. 4. On January 1, 2025, K.S.A. 44-1706 is hereby amended to read as follows: 44-1706. Except as provided by ~~subsections (g) and (j)~~ of K.S.A. 44-1704(g) and (j), and amendments thereto, each professional employer organization, or collectively each professional employer group shall either:

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

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

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

Sec. 6. On January 1, 2025, K.S.A. 44-1709 is hereby amended to read as follows: 44-1709. (a) It shall be a violation of the provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto:

(1) For a person to knowingly offer or provide professional employer services or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer or other title representing professional employer services without registering in accordance with K.S.A. 44-1704, and amendments thereto;

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

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

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

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

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

(C) pursuant to 18 U.S.C. § 1033; or

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

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

(1) Deny the application for registration;

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

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

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

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

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

Sec. 7. On January 1, 2025, K.S.A. 44-1710 is hereby amended to read as follows: 44-1710. The ~~commissioner~~ *secretary* is hereby authorized to and shall adopt such rules and regulations as the ~~commissioner~~ *secretary* deems necessary to implement and enforce the provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto.

Sec. 8. K.S.A. 44-1708 is hereby repealed.

Sec. 9. On January 1, 2025, K.S.A. 44-1702, 44-1704, 44-1705, 44-1706, 44-1709 and 44-1710 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.