

SECOND REGULAR SESSION

HOUSE BILL NO. 2400

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOUX.

5038H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 285.730, RSMo, and to enact in lieu thereof one new section relating to professional employer organizations.

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

Section A. Section 285.730, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 285.730, to read as follows:

285.730. 1. Except as specifically provided in sections 285.700 to 285.750 or in the professional employer agreement, in each coemployment relationship:

(1) The client shall be entitled to exercise all rights, and shall be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship;

(2) The PEO shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required under sections 285.700 to 285.750 or set forth in the professional employer agreement. The rights, duties, and obligations of the PEO as coemployer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and sections 285.700 to 285.750 during the term of coemployment by the PEO of such covered employee; and

(3) Unless otherwise expressly agreed by the PEO and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to the covered employees.

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.

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. Each
20 professional employer agreement shall include the following:

21 (1) The allocation of rights, duties, and obligations as described in subsection 1 of this
22 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; and

26 (c) To the extent the PEO has assumed responsibility in the professional employer
27 agreement, to make payments for employee benefits for covered employees.

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29 As used in this section, the term "wages" does not include any obligation between a client and
30 a covered employee for payments beyond or in addition to the covered employee's salary,
31 draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred
32 compensation, profit sharing, vacation, sick, or other paid-time off pay, unless the PEO has
33 expressly agreed to assume liability for such payments in the professional employer
34 agreement; and

35 (3) A requirement that the PEO shall have a right to hire, discipline, and terminate a
36 covered employee as may be necessary to fulfill the PEO's responsibilities under sections
37 285.700 to 285.750 and the professional employer agreement. The client shall have a right to
38 hire, discipline, and terminate a covered employee.

39 3. With respect to each professional employer agreement entered into by a PEO, such
40 PEO shall provide written notice to each covered employee affected by such agreement of the
41 general nature of the coemployment relationship between and among the PEO, the client, and
42 such covered employee.

43 4. Except to the extent otherwise expressly provided by the applicable professional
44 employer agreement:

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

47 (2) A client shall be solely responsible for directing, supervising, training, and
48 controlling the work of the covered employees with respect to the business activities of the
49 client and solely responsible for the acts, errors, or omissions of the covered employees with
50 regard to such activities;

51 (3) A client shall not be liable for the acts, errors, or omissions of a PEO or of any
52 covered employee of the client and a PEO if such covered employee is acting under the
53 express direction and control of the PEO;

54 (4) A PEO shall not be liable for the acts, errors, or omissions of a client or of any
55 covered employee of the client if such covered employee is acting under the express direction
56 and control of the client;

57 (5) Nothing in this subsection shall serve to limit any contractual liability or
58 obligation specifically provided in the written professional employer agreement; and

59 (6) A covered employee is not, solely as the result of being a covered employee of a
60 PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds,
61 surety bonds, employer's liability that is not covered by workers' compensation, or liquor
62 liability insurance carried by the PEO unless the covered employees are included by specific
63 reference in the professional employer agreement and applicable prearranged employment
64 contract, insurance contract, or bond.

65 5. A PEO under sections 285.700 to 285.750 is not engaged in the sale of insurance or
66 in acting as a third-party administrator by offering, marketing, selling, administering, or
67 providing professional employer services that include services and employee benefit plans for
68 covered employees. **A client and a registered professional employer organization shall**
69 **each be deemed an employer under the laws of this state for purposes of sponsoring**
70 **retirement and welfare benefits plans for its covered employees. A fully insured welfare**
71 **benefit plan sponsored by a registered professional employer organization for the**
72 **benefit of its covered employees shall be treated for the purposes of state law as a single**
73 **employer welfare benefit plan. For purposes of sponsoring welfare benefit plans for its**
74 **eligible covered employees, a registered professional employer organization shall be**
75 **considered the employer of all of its eligible covered employees, and all eligible covered**
76 **employees of one or more clients participating in a health benefit plan sponsored by a**
77 **registered professional employer organization shall be considered employees of such**
78 **registered professional employer organization.** The provisions of this section shall not
79 supersede or preempt any requirements under section 375.014.

80 6. For purposes of this state or any county, municipality, or other political subdivision
81 thereof:

82 (1) Any tax or assessment imposed upon professional employer services or any
83 business license or other fee that is based upon gross receipts shall allow a deduction from the
84 gross income or receipts of the business derived from performing professional employer
85 services that is equal to that portion of the fee charged to a client that represents the actual
86 cost of wages and salaries, benefits, payroll taxes, withholding, or other assessments paid to
87 or on behalf of a covered employee by the professional employer organization under a
88 professional employer agreement;

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

91 professional employer organization for its employees who are not covered employees
92 coemployed with a client. Benefits or monetary consideration that meet the requirements of
93 mandates imposed on a client and that are received by covered employees through the PEO
94 either through payroll or through benefit plans sponsored by the PEO shall be credited against
95 the client's obligation to fulfill such mandates; and

96 (3) In the case of a tax or an assessment imposed or calculated upon the basis of total
97 payroll, the professional employer organization shall be eligible to apply any small business
98 allowance or exemption available to the client for the covered employees for purposes of
99 computing the tax.

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