

HB 2203 -- PROFESSIONAL EMPLOYER ORGANIZATION ACT

SPONSOR: Jones (50)

This bill establishes the Professional Employer Organization Act. In its main provisions, the bill:

The bill prohibits any professional employer agreement from affecting, modifying, or amending any collective bargaining agreement or the rights or obligations of any client, professional employer organization (PEO), or covered employee under the federal National Labor Relations Act, the federal Railway Labor Act, or Sections 105.500 to 105.530, RSMo.

The bill prohibits a professional employer agreement from:

- (1) Diminishing, abolishing, or removing rights of a covered employee to a client or obligation of the client to a covered employee existing prior to the effective date of the professional employer agreement;
- (2) Affecting, modifying, or amending any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective. A professional employer agreement must also not prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client or a covered employee. A PEO must have no responsibility or liability in connection with, or arising out of, any existing or new contractual relationship or restrictive covenant unless the PEO has specifically agreed otherwise in writing; or
- (3) Creating any new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or this act.

A professional employer agreement is prohibited from affecting, modifying, or amending any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

The bill specifies that a covered employee who must be licensed, registered, or certified according to law or regulation is deemed solely an employee of the client for purposes of any license, registration, or certification requirement. A PEO must not be deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements, or is otherwise regulated by a governmental entity solely by entering into and maintaining a

co-employment relationship with a covered employee who is subject to the requirements or regulation.

A client must have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. Covered employees and clients must remain subject to regulation by the regulatory or governmental entity responsible for licensing, registration, or certification of covered employees or clients.

For purposes of determination of tax credits and other economic incentives provided by this state or other government entity and based on employment, covered employees must be deemed employees solely of the client. A client must be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client.

Notwithstanding that the PEO is the W-2 reporting employer, the client must continue to qualify for the benefit, incentive or credit. If the grant or amount of any incentive is based on the number of employees, then each client must be treated as employing only those covered employees co-employed by the client. Covered employees working for other clients of the PEO are not counted. Each PEO will provide, upon request by a client, agency, or department of this state, employment information reasonably required by any agency or department of this state responsible for administration of any tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client seeking any tax credit or economic incentive.

With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise, or as a historically underutilized business is not affected because the client company has entered into an agreement with a PEO or uses the services of a PEO.

The bill prohibits an individual from providing, advertising, or otherwise holding himself or herself out as providing professional employer services in this state, unless the person is registered under this act. The bill specifies what information an applicant for registration must provide.

Each PEO operating within the state as of the effective date of this bill must complete its initial registration not later than 180 days after the effective date. The initial registration must be valid until 180 days from the end of the PEO's first fiscal year

end that is more than one year after the effective date.

Each PEO not operating within this state as of the effective date of this act must complete its initial registration prior to initiating operations within the state. In the event a PEO not registered in this state becomes aware that an existing client not based in this state has employees and operations in this state, the PEO must either decline to provide PEO services for those employees or notify the department within five business days of its knowledge of this fact and file a limited registration application or a full business registration if there are more than 50 covered employees.

The department may issue an interim operating permit for the period the registration applications are pending if the PEO is currently registered or licensed by another state and the department determines it to be in the best interest of the potential covered employees.

Within 180 days after the end of a registration's fiscal year, the registrant must renew its registration by notifying the department of any changes in the information provided in the registrations most recent registration or renewal. A registrant's existing registration must remain in effect during the pendency of a renewal application.

PEO's in a PEO group may satisfy the reporting and financial requirements of this registration law on a combined or consolidated basis provided that each member of the PEO group guarantees the financial capacity obligations under this act of each other member of the PEO group. In the case of a PEO group that submits a combined or consolidated audited financial statement including entities that are not PEO's or that are not in the PEO group, the controlling entity of the PEO group under the consolidated or combined statement must guarantee the obligations of the PEO's in the PEO group.

The bill specifies when a PEO is eligible for a limited registration. The department is required to maintain a list of registered PEOs that is readily available to the public by electronic or other means.

The department must, to the extent practical, permit by rule the acceptance of electronic filings in conformance with Sections 432.200 to 432.295, including applications, documents, reports, and other filings required and must permit a PEO to authorize an assurance organization approved by the director to act on the PEO's behalf in complying with the registration requirements, including electronic filings of information and payment of registration fees. Use of an approved assurance organization must be optional and not

mandatory for a registrant.

All records, reports, and other information obtained from a PEO, except to the extent necessary for the proper administration of these provisions by the department must be confidential and must not be published or open to public inspection other than to public employees in the performance of their public duties.

Upon filing an initial registration statement, a PEO must pay an initial registration fee not to exceed \$500. Upon each annual renewal of a registration statement, a PEO must pay a renewal fee not to exceed \$250. The department must determine by rule any fee to be charged for a group registration.

Each PEO seeking limited registration must pay a fee in the amount not to exceed \$250 upon initial application for limited registration and upon each renewal of the limited registration. Any fee charged cannot exceed the amount reasonably necessary for the administration of this act.

Each PEO or collectively each PEO group must maintain either positive working capital as defined by generally accepted accounting principles at registration as reflected in the financial statements submitted to the department with the initial registration and each annual renewal, or a PEO or PEO group that does not have positive working capital may provide a bond, irrevocable letter of credit, or securities with a minimum market value equaling the deficiency plus \$100,000 to the department. The bond is to be held by a depository designated by the department securing payment by the PEO of all taxes, wages, benefits, or other entitlement due to or with respect to covered employees if the PEO does not make the payments when due.

In each co-employment relationship the client must be entitled to exercise all rights, and must be obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship; the PEO must be entitled to exercise only those rights, and obligated to perform only those duties and responsibilities specifically required by law or set forth in the professional employer agreement. The rights, duties, and obligations of the PEO as co-employer with respect to any covered employee must be limited to those arising pursuant to the professional employer agreement during the term of co-employment by the PEO of the covered employee; and 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.

The co-employment relationship between the client and the PEO, and between each co-employer and each covered employee must be governed by the professional employer agreement. The bill specifies what a professional employer agreement must include.

With respect to each professional employer agreement entered into by a PEO, the PEO must provide written notice to each covered employee affected by the agreement of the general nature of the co-employment relationship between and among the PEO, the client, and the covered employee.

The bill specifies that a PEO is not engaged in the sale of insurance or in acting as a third party administrator by offering, marketing, selling, administering, or providing professional employer services which include services and employee benefit plans for covered employees.

For purposes of this state or any county, municipality, or other political subdivision thereof, covered employees whose services are subject to sales tax must be deemed the employees of the client for purposes of collecting and levying sales tax on the services performed by the covered employee. These provisions do not relieve a client of any sales tax liability with respect to its goods or services. Any tax or assessment imposed upon professional employer services or any business license or other fee that is based upon "gross receipts" must allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the PEO under a professional employer agreement.

Any tax assessed, assessment, or mandated expenditure on a per capita or per employee basis must be assessed against the client for covered employees and against the PEO for its employees who are not covered employees co-employed with a client. Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the PEO either through payroll or through benefit plans sponsored by the PEO must be credited against the client's obligation to fulfill the mandates. In the case of a tax or an assessment imposed or calculated upon the basis of total payroll, the PEO must be eligible to apply any small business allowance or exemption available to the client for the covered employees for purposes of computing the tax.

A client and a registered PEO must each be deemed an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for its covered employees. A fully-insured welfare benefit plan offered to the covered employees of a single PEO must be treated for purposes of state law as a single employer welfare benefit plan.

A PEO must be considered the employer of all of its covered employees, and all covered employees of one or more clients participating in a health benefit plan sponsored by a single PEO shall be considered employees of that PEO. Specifies what the plan must do if a PEO offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer.

The responsibility to obtain workers' compensation coverage for covered employees in compliance with all applicable laws is specifically allocated in the professional employer agreement to either the client or the PEO. Coverage for both the directly employed workers of a client and the covered employees of that client must be all in the residual or all in the voluntary market.

Workers' compensation coverage for covered employees in the voluntary market may be obtained by either the client through a standard workers' compensation policy or through duly authorized self-insurance or by the PEO through a duly authorized self insurance program, through a master policy issued to the PEO by a carrier authorized to do business in this state, or through a multiple coordinated policy issued by a carrier authorized to do business in this state in the name of the PEO or the client. A carrier providing coverage through the PEO or a PEO authorized to self-insure must report to the appropriate state and rating authorities the client-based information as is necessary to maintain the client's experience rating.

Workers' compensation for covered employees in the residual market may be obtained by the client through a residual market policy or by the PEO through a multiple coordinated policy in either the name of the PEO or the client that provides to the appropriate state and rating authorities the client-based information satisfactory to maintain the client's experience rating.

Both the client and the PEO must be considered the employer for purposes of coverage under the Workers' Compensation Act. The protection of the exclusive remedy provision of the Workers' Compensation Act must apply to the PEO, the client, and to all covered employees and other employees of the client irrespective of which co-employer obtains the workers' compensation coverage.

For purposes of workers' compensation laws, covered employees of a

registered PEO are considered the employees of the PEO, which must be responsible for the payment of contributions, penalties, and interest on wages paid by the PEO to its covered employees during the term of the applicable professional employer agreement.

The PEO must report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the PEO.

On the termination of a contract between a PEO and a client or the failure by a PEO to submit reports or make tax payments as required, the client must be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

The bill specifies a person may not 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 first becoming registered under this act, and may not provide false or fraudulent information to the department in conjunction with any registration, renewal, or in any report required.

The bill specifies that disciplinary action may be taken by the department for violations of these provisions. The bill specifies what the director may do upon finding, after notice and opportunity for hearing, that a PEO, or a controlling person of a PEO, or a person offering PEO services has violated one or more of these provisions.