

SECOND REGULAR SESSION

SENATE BILL NO. 877

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Read 1st time January 11, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5583S.011

AN ACT

To repeal section 288.032, RSMo, and to enact in lieu thereof twelve new sections relating to professional employer organizations.

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

Section A. Section 288.032, RSMo, is repealed and twelve new sections enacted in lieu thereof, to be known as sections 285.700, 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.735, 285.740, 285.745, 285.750, and 288.032, to read as follows:

285.700. Sections 285.700 to 285.750 shall be known and may be cited as the "Professional Employer Organization Act".

285.705. As used in sections 285.700 to 285.750, the following terms mean:

(1) "Client", any person who enters into a professional employer agreement with a PEO;

(2) "Coemployer", either a PEO or a client;

(3) "Coemployment relationship", a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and sections 285.700 to 285.750. In such a coemployment relationship:

(a) The PEO is entitled to enforce only such employer rights, and is subject to only those obligations specifically allocated to the PEO by the professional employer agreement or sections 285.700 to 285.750;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 **(b) The client is entitled to enforce those rights, and obligated**
17 **to provide and perform those employer obligations allocated to such**
18 **client by the professional employer agreement and sections 285.700 to**
19 **285.750; and**

20 **(c) The client is entitled to enforce any right and obligated to**
21 **perform any obligation of an employer not specifically allocated to the**
22 **PEO by the professional employer agreement or sections 285.700 to**
23 **285.750;**

24 **(4) "Covered employee", an individual having a coemployment**
25 **relationship with a PEO and a client who meets the following criteria:**

26 **(a) The individual has received written notice of coemployment**
27 **with the PEO; and**

28 **(b) The individual's coemployment relationship is pursuant to a**
29 **professional employer agreement subject to sections 285.700 to 285.750.**
30 **Individuals who are officers, directors, shareholders, partners, and**
31 **managers of the client will be covered employees, except to the extent**
32 **the PEO and the client have expressly agreed in the professional**
33 **employer agreement that such individuals would not be covered**
34 **employees, provided such individuals meet the criteria of this**
35 **subdivision and act as operational managers or perform day-to-day**
36 **operational services for the client;**

37 **(5) "Department", the department of insurance, financial**
38 **institutions and professional registration;**

39 **(6) "Director", the director of the department of insurance,**
40 **financial institutions and professional registration;**

41 **(7) "PEO group", any two or more PEOs that are majority owned**
42 **or commonly controlled by the same entity, parent, or controlling**
43 **person;**

44 **(8) "Person", any individual, partnership, corporation, limited**
45 **liability company, association, or any other form of legally recognized**
46 **entity;**

47 **(9) "Professional employer agreement", a written contract by and**
48 **between a client and a PEO that provides:**

49 **(a) For the coemployment of covered employees;**

50 **(b) For the allocation of employer rights and obligations between**
51 **the client and the PEO with respect to the covered employees; and**

52 **(c) That the PEO and the client assume the responsibilities**

53 required by sections 285.700 to 285.750;

54 (10) "Professional employer organization" or "PEO", any person
55 engaged in the business of providing professional employer services. A
56 person engaged in the business of providing professional employer
57 services shall be subject to registration and regulation under sections
58 285.700 to 285.750 regardless of its use of the term or conducting
59 business as a professional employer organization, PEO, staff leasing
60 company, registered staff leasing company, employee leasing company,
61 administrative employer, or any other name.

62 The following shall not be deemed to be professional employer
63 organizations or the providing of professional employment services for
64 the purposes of sections 285.700 to 285.750:

65 (a) Arrangements wherein a person, whose principal business
66 activity is not entering into professional employer arrangements and
67 does not hold itself out as a PEO, shares employees with a commonly
68 owned company within the meaning of section 414(b) and (c) of the
69 Internal Revenue Code of 1986, as amended;

70 (b) Independent contractor arrangements by which a person
71 assumes responsibility for the product produced or service performed
72 by such person or his or her agents and retains and exercises primary
73 direction and control over the work performed by the individuals
74 whose services are supplied under such arrangements; and

75 (c) Providing temporary help services;

76 (11) "Professional employer services", the service of entering into
77 coemployment relationships under sections 285.700 to 285.750 in which
78 all or a majority of the employees providing services to a client or to
79 a division or work unit of a client are covered employees;

80 (12) "Registrant", a PEO registered under sections 285.700 to
81 285.750;

82 (13) "Temporary help services", services consisting of a person:

83 (a) Recruiting and hiring its own employees;

84 (b) Finding other organizations that need the services of those
85 employees;

86 (c) Assigning those employees to perform work at or services for
87 the other organizations to support or supplement the other
88 organizations' workforces, or to provide assistance in special work
89 situations including, but not limited to, employee absences, skill

90 shortages, seasonal workloads, or to perform special assignments or
91 projects; and

92 (d) Customarily attempting to reassign the employees to other
93 organizations when they finish each assignment.

285.710. 1. Nothing contained in sections 285.700 to 285.750 or in
2 any professional employer agreement shall affect, modify, or amend any
3 collective bargaining agreement or the rights or obligations of any
4 client, PEO, or covered employee under the federal National Labor
5 Relations Act, the federal Railway Labor Act, or sections 105.500 to
6 105.530.

7 2. Nothing in sections 285.700 to 285.750 or in any professional
8 employer agreement shall:

9 (1) Diminish, abolish, or remove rights of covered employees to
10 a client or obligations of such client to a covered employee existing
11 prior to the effective date of the professional employer agreement;

12 (2) Affect, modify, or amend any contractual relationship or
13 restrictive covenant between a covered employee and any client in
14 effect at the time a professional employer agreement becomes effective.
15 A professional employer agreement shall also not prohibit or amend
16 any contractual relationship or restrictive covenant that is entered into
17 subsequently between a client or a covered employee. A PEO shall have
18 no responsibility or liability in connection with, or arising out of, any
19 such existing or new contractual relationship or restrictive covenant
20 unless the PEO has specifically agreed otherwise in writing; or

21 (3) Create any new or additional enforceable right of a covered
22 employee against a PEO that is not specifically provided by the
23 professional employer agreement or sections 285.700 to 285.750.

24 3. Nothing contained in sections 285.700 to 285.750 or any
25 professional employer agreement shall affect, modify, or amend any
26 state, local, or federal licensing, registration, or certification
27 requirement applicable to any client or covered employee.

28 (1) A covered employee who shall be licensed, registered, or
29 certified according to law or regulation is deemed solely an employee
30 of the client for purposes of any such license, registration, or
31 certification requirement.

32 (2) A PEO shall not be deemed to engage in any occupation,
33 trade, profession, or other activity that is subject to licensing,

34 registration, or certification requirements, or is otherwise regulated by
35 a governmental entity solely by entering into and maintaining a
36 coemployment relationship with a covered employee who is subject to
37 such requirements or regulation.

38 (3) A client shall have the sole right of direction and control of
39 the professional or licensed activities of covered employees and of the
40 client's business. Such covered employees and clients shall remain
41 subject to regulation by the regulatory or governmental entity
42 responsible for licensing, registration, or certification of such covered
43 employees or clients.

44 4. For purposes of determination of tax credits and other
45 economic incentives provided by this state or other government entity
46 and based on employment, covered employees shall be deemed
47 employees solely of the client. A client shall be entitled to the benefit
48 of any tax credit, economic incentive, or other benefit arising as the
49 result of the employment of covered employees of such
50 client. Notwithstanding that the PEO is the W-2 reporting employer,
51 the client shall continue to qualify for such benefit, incentive, or credit.
52 If the grant or amount of any such incentive is based on number of
53 employees, then each client shall be treated as employing only those
54 covered employees coemployed by the client. Covered employees
55 working for other clients of the PEO shall not be counted. Each PEO
56 will provide, upon request by a client or an agency or department of
57 this state, employment information reasonably required by any agency
58 or department of this state responsible for administration of any such
59 tax credit or economic incentive and necessary to support any request,
60 claim, application, or other action by a client seeking any such tax
61 credit or economic incentive.

62 5. With respect to a bid, contract, purchase order, or agreement
63 entered into with the state or a political subdivision of the state, a
64 client company's status or certification as a minority-owned or woman-
65 owned business enterprise shall not be affected because the client
66 company has entered into an agreement with a PEO or uses the
67 services of a PEO.

285.715. 1. Except as otherwise provided in sections 285.700 to
2 285.750, no person shall provide, advertise, or otherwise hold itself out
3 as providing professional employer services in this state, unless such

4 person is registered under sections 285.700 to 285.750.

5 2. Each applicant for registration under sections 285.700 to
6 285.750 shall provide the department with the following information:

7 (1) The name or names under which the PEO conducts business;

8 (2) The address of the principal place of business of the PEO and
9 the address of each office it maintains in the state;

10 (3) The PEO's taxpayer or employer identification number;

11 (4) A list by jurisdiction of each name under which the PEO has
12 operated in the preceding five years, including any alternative names,
13 names of predecessors, and, if known, successor business entities;

14 (5) A statement of ownership, which shall include the name and
15 evidence of the business experience of any person that, individually or
16 acting in concert with one or more other persons, owns or controls,
17 directly or indirectly, twenty-five percent or more of the equity
18 interests of the PEO;

19 (6) A statement of management, which shall include the name
20 and evidence of the business experience of any person who serves as
21 president, chief executive officer, or otherwise has the authority to act
22 as senior executive officer of the PEO; and

23 (7) A financial statement setting forth the financial condition of
24 the PEO or PEO group. At the time of application for a new license, the
25 applicant shall submit the most recent audit of the applicant, which
26 may not be older than thirteen months. Thereafter, a PEO or PEO
27 group shall file on an annual basis, within one hundred eighty days
28 after the end of the PEO's or PEO group's fiscal year, a succeeding
29 audit. An applicant may apply for an extension with the department,
30 but any such request shall be accompanied by a letter from the auditors
31 stating the reasons for the delay and the anticipated audit completion
32 date. The financial statement shall be prepared in accordance with
33 generally accepted accounting principals and audited by an
34 independent certified public accountant licensed to practice in the
35 jurisdiction in which such accountant is located and shall be without
36 qualification as to the going concern status of the PEO. A PEO or PEO
37 group may submit combined or consolidated audited financial
38 statements to meet the requirements of this section. A PEO that has
39 not had sufficient operating history to have audited financials based
40 upon at least twelve months of operating history shall meet the

41 financial capacity requirements of sections 285.700 to 285.750 and
42 present financial statements reviewed by a certified public accountant.

43 3. (1) Each PEO operating within this state as of August 28, 2016
44 shall complete its initial registration not later than one hundred eighty
45 days after the effective date of sections 285.700 to 285.750. Such initial
46 registration shall be valid until one hundred eighty days from the end
47 of the PEO's first fiscal year that is more than one year after the
48 effective date of sections 285.700 to 285.750.

49 (2) Each PEO not operating within this state as of August 28,
50 2016 shall complete its initial registration prior to initiating operations
51 within this state. In the event a PEO not registered in this state
52 becomes aware that an existing client not based in this state has
53 employees and operations in this state, the PEO shall either decline to
54 provide PEO services for those employees or notify the department
55 within five business days of its knowledge of this fact and file a limited
56 registration application under subsection 6 of this section or a full
57 business registration if there are more than fifty covered
58 employees. The department may issue an interim operating permit for
59 the period the registration applications are pending if the PEO is
60 currently registered or licensed by another state and the department
61 determines it to be in the best interest of the potential covered
62 employees.

63 4. Within one hundred eighty days after the end of a
64 registration's fiscal year, such registrant shall renew its registration by
65 notifying the department of any changes in the information provided
66 in such registration's most recent registration or renewal. A
67 registrant's existing registration shall remain in effect during the
68 pendency of a renewal application.

69 5. PEOs in a PEO group may satisfy the reporting and financial
70 requirements of this registration law on a combined or consolidated
71 basis provided that each member of the PEO group guarantees the
72 financial capacity obligations under sections 285.700 to 285.750 of each
73 other member of the PEO group. In the case of a PEO or PEO group
74 that submits a combined or consolidated audited financial statement
75 including entities that are not PEOs or that are not in the PEO group,
76 the controlling entity of the PEO group under the consolidated or
77 combined statement shall guarantee the obligations of the PEOs in the

78 PEO group.

79 6. (1) A PEO is eligible for a limited registration under sections
80 285.700 to 285.750 if such PEO:

81 (a) Submits a properly executed request for limited registration
82 on a form provided by the department;

83 (b) Is domiciled outside this state and is licensed or registered
84 as a professional employer organization in another state;

85 (c) Does not maintain an office in this state or directly solicit
86 clients located or domiciled within this state; and

87 (d) Does not have more than fifty covered employees employed
88 or domiciled in this state on any given day.

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

91 (3) A PEO seeking limited registration under this section shall
92 provide the department with information and documentation necessary
93 to show that the PEO qualifies for a limited registration.

94 7. The department shall maintain a list of professional employer
95 organizations registered under sections 285.700 to 285.750 that is
96 readily available to the public by electronic or other means.

97 8. The department may prescribe forms necessary to promote the
98 efficient administration of this section.

99 9. The department shall, to the extent practical, permit the
100 acceptance of electronic filings in conformance with sections 432.200
101 to 432.295, including applications, documents, reports, and other filings
102 required by sections 285.700 to 285.750. The department may provide
103 for the acceptance of electronic filings and other assurance by an
104 independent and qualified assurance organization approved by the
105 director that provides satisfactory assurance of compliance acceptable
106 to the department consistent with or in lieu of the requirements of
107 sections 285.715 and 285.725 and other requirements of sections 285.700
108 to 285.750 or the rules promulgated pursuant to it. The director shall
109 permit a PEO to authorize such an approved assurance organization to
110 act on the PEO's behalf in complying with the registration
111 requirements of sections 285.700 to 285.750, including electronic filings
112 of information and payment of registration fees. Use of such an
113 approved assurance organization shall be optional and not mandatory
114 for a registrant. Nothing in this subsection shall limit or change the

115 department's authority to register or terminate registration of a
116 professional employer organization or to investigate or enforce any
117 provision of sections 285.700 to 285.750.

118 **10.** All records, reports, and other information obtained from a
119 PEO under sections 285.700 to 285.750, except to the extent necessary
120 for the proper administration of sections 285.700 to 285.750 by the
121 department, shall be confidential and shall not be published or open to
122 public inspection other than to public employees in the performance of
123 their public duties.

285.720. 1. Upon filing an initial registration statement under
2 sections 285.700 to 285.750, a PEO shall pay an initial registration fee
3 not to exceed five hundred dollars.

4 **2.** Upon each annual renewal of a registration statement filed
5 under sections 285.700 to 285.750, a PEO shall pay a renewal fee not to
6 exceed two hundred fifty dollars.

7 **3.** The department shall determine by rule any fee to be charged
8 for a group registration. Any rule or portion of a rule, as that term is
9 defined in section 536.010 that is created under the authority delegated
10 in this section shall become effective only if it complies with and is
11 subject to all of the provisions of chapter 536, and, if applicable, section
12 536.028. This section and chapter 536 are nonseverable and if any of
13 the powers vested with the general assembly pursuant to chapter 536,
14 to review, to delay the effective date, or to disapprove and annul a rule
15 are subsequently held unconstitutional, then the grant of rulemaking
16 authority and any rule proposed or adopted after August 28, 2016, shall
17 be invalid and void.

18 **4.** Each PEO seeking limited registration shall pay a fee in the
19 amount not to exceed two hundred fifty dollars upon initial application
20 for limited registration and upon each renewal of such limited
21 registration.

22 **5.** No fee charged under sections 285.700 to 285.750 shall exceed
23 the amount reasonably necessary for the administration of sections
24 285.700 to 285.750.

285.725. 1. Except as provided by 285.715, each PEO or
2 collectively each PEO group shall maintain either:

3 **(1)** Positive working capital as defined by generally accepted
4 accounting principles at registration as reflected in the financial

5 statements submitted to the department with the initial registration
6 and each annual renewal; or

7 (2) A PEO or PEO group that does not have positive working
8 capital may provide a bond, irrevocable letter of credit, or securities
9 with a minimum market value equaling the deficiency plus one
10 hundred thousand dollars to the department. Such bond is to be held
11 by a depository designated by the department securing payment by the
12 PEO of all taxes, wages, benefits, or other entitlement due to or with
13 respect to covered employees if the PEO does not make such payments
14 when due.

15 2. The provisions of this section shall not apply to applicants for
16 limited registration.

285.730. 1. Except as specifically provided in sections 285.700 to
2 285.750 or in the professional employer agreement, in each
3 coemployment relationship:

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

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

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

21 2. Except as specifically provided in sections 285.700 to 285.750,
22 the coemployment relationship between the client and the PEO, and
23 between each coemployer and each covered employee shall be governed
24 by the professional employer agreement. Each professional employer
25 agreement shall include the following:

26 **(1) The allocation of rights, duties, and obligations as described**
27 **in subsection 1 of this section;**

28 **(2) That the PEO shall have responsibility to pay wages to**
29 **covered employees; to withhold, collect, report, and remit payroll-**
30 **related and unemployment taxes; and, to the extent the PEO has**
31 **assumed responsibility in the professional employer agreement, to**
32 **make payments for employee benefits for covered employees. As used**
33 **in this section, the term "wages" does not include any obligation**
34 **between a client and a covered employee for payments beyond or in**
35 **addition to the covered employee's salary, draw, or regular rate of pay,**
36 **such as bonuses, commissions, severance pay, deferred compensation,**
37 **profit sharing, vacation, sick, or other paid-time off pay, unless the PEO**
38 **has expressly agreed to assume liability for such payments in the**
39 **professional employer agreement;**

40 **(3) That the PEO shall have a right to hire, discipline, and**
41 **terminate a covered employee as may be necessary to fulfill the PEO's**
42 **responsibilities under sections 285.700 to 285.750 and the professional**
43 **employer agreement. The client shall have a right to hire, discipline,**
44 **and terminate a covered employee; and**

45 **(4) The responsibility to obtain workers' compensation coverage**
46 **for covered employees from a carrier licensed to do business in this**
47 **state and otherwise in compliance with all applicable requirements,**
48 **shall be specifically allocated to either the client or the PEO in the**
49 **professional employer agreement.**

50 **3. With respect to each professional employer agreement entered**
51 **into by a PEO, such PEO shall provide written notice to each covered**
52 **employee affected by such agreement of the general nature of the**
53 **coemployment relationship between and among the PEO, the client, and**
54 **such covered employee.**

55 **4. Except to the extent otherwise expressly provided by the**
56 **applicable professional employer agreement:**

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

60 **(2) A client shall be solely responsible for directing, supervising,**
61 **training, and controlling the work of the covered employees with**
62 **respect to the business activities of the client and solely responsible for**

63 the acts, errors, or omissions of the covered employees with regard to
64 such activities;

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

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

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

76 (6) A covered employee is not, solely as the result of being a
77 covered employee of a PEO, an employee of the PEO for purposes of
78 general liability insurance, fidelity bonds, surety bonds, employer's
79 liability that is not covered by workers' compensation, or liquor
80 liability insurance carried by the PEO unless the covered employees
81 are included by specific reference in the professional employer
82 agreement and applicable prearranged employment contract, insurance
83 contract, or bond.

84 5. A PEO under sections 285.700 to 285.750 is not engaged in the
85 sale of insurance or in acting as a third party administrator by
86 offering, marketing, selling, administering, or providing professional
87 employer services that include services and employee benefit plans for
88 covered employees.

89 6. For purposes of this state or any other political subdivision
90 thereof:

91 (1) Any tax or assessment imposed upon professional employer
92 services or any business license or other fee that is based upon "gross
93 receipts" shall allow a deduction from the gross income or receipts of
94 the business derived from performing professional employer services
95 that is equal to that portion of the fee charged to a client that
96 represents the actual cost of wages and salaries, benefits, workers'
97 compensation, payroll taxes, withholding, or other assessments paid to
98 or on behalf of a covered employee by the professional employer
99 organization under a professional employer agreement;

100 **(2) Any tax assessed or assessment or mandated expenditure on**
101 **a per capita or per employee basis shall be assessed against the client**
102 **for covered employees and against the professional employer**
103 **organization for its employees who are not covered employees**
104 **coemployed with a client. Benefits or monetary consideration that**
105 **meet the requirements of mandates imposed on a client and that are**
106 **received by covered employees through the PEO either through payroll**
107 **or through benefit plans sponsored by the PEO shall be credited**
108 **against the client's obligation to fulfill such mandates; and**

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

285.735. 1. A client and a PEO shall each be deemed an employer
2 **under the laws of this state for purposes of sponsoring retirement and**
3 **welfare benefit plans for its covered employees.**

4 **2. A fully-insured welfare benefit plan offered to the covered**
5 **employees of a single PEO shall be treated for purposes of state law as**
6 **a single employer welfare benefit plan.**

7 **3. For purposes of sections 379.930 to 379.952, a PEO shall be**
8 **considered the employer of all its covered employees, and all covered**
9 **employees of one or more clients participating in a health benefit plan**
10 **sponsored by a single PEO shall be considered employees of that PEO.**

11 **4. If a PEO offers to its covered employees any health benefit**
12 **plan that is not fully insured by an authorized insurer, the plan shall:**

13 **(1) Utilize a third-party administrator licensed to do business in**
14 **this state;**

15 **(2) Hold all plan assets, including participant contributions, in**
16 **a trust account consistent with the requirements of Section 403 of the**
17 **Employee Retirement Income Security Act of 1974 ("ERISA");**

18 **(3) Provide sound reserves for such plan as determined using**
19 **generally accepted actuarial standards of practice and consistent with**
20 **the prudence and loyalty standards of care for ERISA fiduciaries; and**

21 **(4) Provide written notice to each covered employee**
22 **participating in the benefit plan that the plan is self-funded or is not**
23 **fully-insured.**

285.740. 1. The responsibility to obtain workers' compensation coverage for covered employees in compliance with all applicable laws shall be specifically allocated in the professional employer agreement to either the client or the PEO.

2. Coverage for both the directly employed workers of a client and the covered employees of that client shall be all in the residual or all in the voluntary market.

(1) Workers' compensation coverage for covered employees in the voluntary market may be obtained by:

(a) The client through a standard workers' compensation policy or through duly authorized self-insurance;

(b) By the PEO through a duly authorized self insurance program;

(c) Through a master policy issued to the PEO by a carrier authorized to do business in this state; or

(d) 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 or providing coverage through a master policy shall report to the appropriate state and rating authorities such client-based information as is necessary to maintain the client's experience rating, including payroll and claims data for each client company. Upon termination of the employee leasing arrangement, the client company's experience modification applies to the client company's future policies.

(2) 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.

3. Both the client and the PEO shall be considered the employer for purposes of coverage under chapter 287. The protection of the exclusive remedy provision under section 287.120 shall apply to the PEO, the client, and to all covered employees and other employees of the client irrespective of which coemployer obtains such workers' compensation coverage.

285.745. For purposes of chapter 288, a PEO registered under
2 sections 285.700 to 285.750 shall be treated as a "lessor employing unit"
3 under section 288.032.

285.750. 1. A person shall not knowingly:

2 (1) Offer or provide professional employer services or use the
3 names PEO, professional employer organization, staff leasing, employee
4 leasing, administrative employer, or other title representing
5 professional employer services without first becoming registered under
6 sections 285.700 to 285.750; or

7 (2) Provide false or fraudulent information to the department in
8 conjunction with any registration, renewal, or in any report required
9 under sections 285.700 to 285.750.

10 2. Disciplinary action may be taken by the department for
11 violation of this section for:

12 (1) The conviction of a professional employer organization or a
13 controlling person of a PEO of a crime that relates to the operation of
14 a PEO or the ability of the licensee or a controlling person of a licensee
15 to operate a PEO;

16 (2) Knowingly making a material misrepresentation to the
17 department or other governmental agency; or

18 (3) A willful violation of sections 285.700 to 285.750 or any order
19 or regulation issued by the department under sections 285.700 to
20 285.750.

21 3. Upon finding, after notice and opportunity for hearing, that
22 a PEO, a controlling person of a PEO, or a person offering PEO services
23 has violated one or more provisions of this section and subject to
24 appeal, the director may:

25 (1) Deny an application for a license;

26 (2) Revoke, restrict, or refuse to renew a license;

27 (3) Impose an administrative penalty in an amount not to exceed
28 one thousand dollars for each material violation;

29 (4) Place the licensee on probation for the period and subject to
30 conditions that the department specifies; or

31 (5) Issue a cease and desist.

288.032. 1. After December 31, 1977, "employer" means:

2 (1) Any employing unit which in any calendar quarter in either the
3 current or preceding calendar year paid for service in employment wages of one

4 thousand five hundred dollars or more except that for the purposes of this
5 definition, wages paid for "agricultural labor" as defined in paragraph (a) of
6 subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as
7 defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not
8 be considered;

9 (2) Any employing unit which for some portion of a day in each of twenty
10 different calendar weeks, whether or not such weeks were consecutive, in either
11 the current or the preceding calendar year, had in employment at least one
12 individual (irrespective of whether the same individual was in employment in
13 each such day); except that for the purposes of this definition, services performed
14 in "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection
15 12 of section 288.034 and in "domestic services" as defined in subdivisions (2) and
16 (13) of subsection 12 of section 288.034 shall not be considered;

17 (3) Any governmental entity for which service in employment as defined
18 in subsection 7 of section 288.034 is performed;

19 (4) Any employing unit for which service in employment as defined in
20 subsection 8 of section 288.034 is performed during the current or preceding
21 calendar year;

22 (5) Any employing unit for which service in employment as defined in
23 paragraph (b) of subdivision (1) of subsection 12 of section 288.034 is performed
24 during the current or preceding calendar year;

25 (6) Any employing unit for which service in employment as defined in
26 subsection 13 of section 288.034 is performed during the current or preceding
27 calendar year;

28 (7) Any individual, type of organization or employing unit which has been
29 determined to be a successor pursuant to section 288.110;

30 (8) Any individual, type of organization or employing unit which has
31 elected to become subject to this law pursuant to subdivision (1) of subsection 3
32 of section 288.080;

33 (9) Any individual, type of organization or employing unit which, having
34 become an employer, has not pursuant to section 288.080 ceased to be an
35 employer;

36 (10) Any employing unit subject to the Federal Unemployment Tax Act or
37 which, as a condition for approval of this law for full tax credit against the tax
38 imposed by the Federal Unemployment Tax Act, is required, pursuant to such act,
39 to be an employer pursuant to this law.

40 2. (1) Notwithstanding any other provisions of this law, any employer,
41 individual, organization, partnership, corporation, other legal entity or employing
42 unit that meets the definition of "lessor employing unit", as defined in subdivision
43 (5) of this subsection, shall be liable for contributions on wages paid by the lessor
44 employing unit to individuals performing services for client lessees of the lessor
45 employing unit. Unless the lessor employing unit has timely complied with the
46 provisions of subdivision (3) of this subsection, any employer, individual,
47 organization, partnership, corporation, other legal entity or employing unit which
48 is leasing individuals from any lessor employing unit shall be jointly and
49 severally liable for any unpaid contributions, interest and penalties due pursuant
50 to this law from any lessor employing unit attributable to wages for services
51 performed for the client lessee entity by individuals leased to the client lessee
52 entity, and the lessor employing unit shall keep separate records and submit
53 separate quarterly contribution and wage reports for each of its client lessee
54 entities. Delinquent contributions, interest and penalties shall be collected in
55 accordance with the provisions of this chapter.

56 (2) Notwithstanding the provisions of subdivision (1) of this subsection,
57 any governmental entity or nonprofit organization that meets the definition of
58 "lessor employing unit", as defined in subdivision (5) of this subsection, and has
59 elected to become liable for payments in lieu of contributions as provided in
60 subsection 3 of section 288.090, shall pay the division payments in lieu of
61 contributions, interest, penalties and surcharges in accordance with section
62 288.090 on benefits paid to individuals performing services for the client lessees
63 of the lessor employing unit. If the lessor employing unit has not timely complied
64 with the provisions of subdivision (3) of this subsection, any client lessees with
65 services attributable to and performed for the client lessees shall be jointly and
66 severally liable for any unpaid payments in lieu of contributions, interest,
67 penalties and surcharges due pursuant to this law. The lessor employing unit
68 shall keep separate records and submit separate quarterly contribution and wage
69 reports for each of its client lessees. Delinquent payments in lieu of
70 contributions, interest, penalties and surcharges shall be collected in accordance
71 with subsection 3 of section 288.090. The election to be liable for payments in
72 lieu of contributions made by a governmental entity or nonprofit organization
73 meeting the definition of "lessor employing unit" may be terminated by the
74 division in accordance with subsection 3 of section 288.090.

75 (3) In order to relieve a client lessees from joint and several liability and

76 the separate reporting requirements imposed pursuant to this subsection, any
77 lessor employing unit may post and maintain a surety bond issued by a corporate
78 surety authorized to do business in Missouri in an amount equivalent to the
79 contributions or payments in lieu of contributions for which the lessor employing
80 unit was liable in the last calendar year in which he or she accrued contributions
81 or payments in lieu of contributions, or one hundred thousand dollars, whichever
82 amount is the greater, to ensure prompt payment of contributions or payments
83 in lieu of contributions, interest, penalties and surcharges for which the lessor
84 employing unit may be, or becomes, liable pursuant to this law. In lieu of a
85 surety bond, the lessor employing unit may deposit in a depository designated by
86 the director, securities with marketable value equivalent to the amount required
87 for a surety bond. The securities so deposited shall include authorization to the
88 director to sell any securities in an amount sufficient to pay any contributions or
89 payments in lieu of contributions, interest, penalties and surcharges which the
90 lessor employing unit fails to promptly pay when due. In lieu of a surety bond
91 or securities as described in this subdivision, any lessor employing unit may
92 provide the director with an irrevocable letter of credit, as defined in section
93 409.5-103, issued by any state or federally chartered financial institution, in an
94 amount equivalent to the amount required for a surety bond as described in this
95 subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit,
96 a lessor employing unit may obtain a certificate of deposit issued by any state or
97 federally chartered financial institution, in an amount equivalent to the amount
98 required for a surety bond as described in this subdivision. The certificate of
99 deposit shall be pledged to the director until release by the director. As used in
100 this subdivision, the term "certificate of deposit" means a certificate representing
101 any deposit of funds in a state or federally chartered financial institution for a
102 specified period of time which earns interest at a fixed or variable rate, where
103 such funds cannot be withdrawn prior to a specified time without forfeiture of
104 some or all of the earned interest.

105 (4) Any lessor employing unit which is currently engaged in the business
106 of leasing individuals to client lessees shall comply with the provisions of
107 subdivision (3) of this subsection by September 28, 1992. Lessor employing units
108 not currently engaged in the business of leasing individuals to client lessees shall
109 comply with subdivision (3) of this subsection before entering into a written lease
110 agreement with client lessees.

111 (5) As used in this subsection, the term "lessor employing unit" means [an

112 independently established business entity,] a **registered professional**
113 **employer organization as defined in subdivision (10) of section 285.705**
114 **or a** governmental entity as defined in subsection 1 of section 288.030 or
115 nonprofit organization as defined in subsection 3 of section 288.090 which,
116 pursuant to a written lease agreement between the lessor employing unit and the
117 client lessees, engages in the business of providing individuals to any other
118 employer, individual, organization, partnership, corporation, other legal entity or
119 employing unit referred to in this subsection as a client lessee.

120 (6) The provisions of this subsection shall not be applicable to private
121 employment agencies who provide their employees to employers on a temporary
122 help basis provided the private employment agencies are liable as employers for
123 the payment of contributions on wages paid to temporary workers so employed.

124 3. After September 30, 1986, notwithstanding any provision of section
125 288.034, for the purpose of this law, in no event shall a for-hire motor carrier as
126 regulated by the Missouri division of motor carrier and railroad safety or whose
127 operations are confined to a commercial zone be determined to be the employer
128 of a lessor as defined in 49 CFR Section 376.2(f), or of a driver receiving
129 remuneration from a lessor as defined in 49 CFR Section 376.2(f), provided,
130 however, the term "for-hire motor carrier" shall in no event include an
131 organization described in Section 501(c)(3) of the Internal Revenue Code or any
132 governmental entity.

133 4. The owner or operator of a beauty salon or similar establishment shall
134 not be determined to be the employer of a person who utilizes the facilities of the
135 owner or operator but who receives neither salary, wages or other compensation
136 from the owner or operator and who pays the owner or operator rent or other
137 payments for the use of the facilities.