

FIRST REGULAR SESSION

# SENATE BILL NO. 266

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Read 1st time January 9, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0249S.011

## AN ACT

To repeal section 288.032, RSMo, and to enact in lieu thereof eleven new sections relating to the regulation of certain business entities.

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

Section A. Section 288.032, RSMo, is repealed and eleven new sections enacted in lieu thereof, to be known as sections 285.700, 285.705, 285.706, 285.710, 285.715, 285.720, 285.725, 285.730, 285.750, 288.032, and 375.1750, to read as follows:

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

**2. The director or any person designated by such director may enforce the provisions of sections 285.700 to 285.750.**

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

**(1) "Board", the PEO board established under section 285.706;**

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

**(3) "Coemployer", either a PEO or a client;**

**(4) "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:**

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

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

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

21           **(c) The client is entitled to enforce any right and obligated to**  
22 **perform any obligation of an employer not specifically allocated to the**  
23 **PEO by the professional employer agreement or sections 285.700 to**  
24 **285.750;**

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

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

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

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

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

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

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

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

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

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

53           **(c) That the PEO and the client assume the responsibilities**  
54 **required under sections 285.700 to 285.750;**

55           **(11) "Professional employer organization" or "PEO", any person**  
56 **engaged in the business of providing professional employer services. A**  
57 **person engaged in the business of providing professional employer**  
58 **services shall be subject to registration and regulation under sections**  
59 **285.700 to 285.750 regardless of its use of the term or conducting**  
60 **business as a professional employer organization, PEO, staff leasing**  
61 **company, registered staff leasing company, employee leasing company,**  
62 **administrative employer, or any other name. The following shall not**  
63 **be deemed to be professional employer organizations or the providing**  
64 **of professional employment services for the purposes of sections**  
65 **285.700 to 285.750:**

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

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

76           **(c) Providing temporary help services;**

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

81           **(13) "Registrant", a PEO registered under sections 285.700 to**  
82 **285.750;**

83           **(14) "Temporary help services", services consisting of a person:**

84           **(a) Recruiting and hiring its own employees;**

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

87           **(c) Assigning those employees to perform work at or services for**

88 the other organizations to support or supplement the other  
89 organizations' workforces, or to provide assistance in special work  
90 situations including, but not limited to, employee absences, skill  
91 shortages, seasonal workloads, or to perform special assignments or  
92 projects; and

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

285.706. 1. There is hereby created within the division of  
2 professional registration a board to be known as the "Professional  
3 Employer Organization Board". The board shall consist of five  
4 members. The board members shall be appointed by the governor with  
5 the advice and consent of the senate.

6 2. Board members shall be appointed to serve a term of four  
7 years, provided that, of the members first appointed, two members shall  
8 be appointed for terms of four years, one member shall be appointed  
9 for a term of three years, one member shall be appointed for a term of  
10 two years, and one member shall be appointed for a term of one year.  
11 No member of the board shall serve more than two terms.

12 3. Each board member shall be a citizen of the United States, a  
13 resident of the state of Missouri, and the owner of, client of, or  
14 employed by a PEO that, except for the first members, is registered  
15 pursuant to sections 285.710 to 285.750.

16 4. Members of the board may be removed from office for  
17 cause. Upon the death, resignation or removal from office of any  
18 member of the board, the appointment to fill the vacancy shall be for  
19 the unexpired portion of the term so vacated and shall be filled in the  
20 same manner as the first appointment.

21 5. Each member of the board may receive as compensation an  
22 amount set by the division not to exceed fifty dollars per day for each  
23 day devoted to the affairs of the board and shall be reimbursed for the  
24 member's reasonable and necessary expenses incurred in the official  
25 performance of the member's duties as a member of the board.

26 6. The board shall hold an annual meeting at which it shall elect  
27 from its membership a chairperson and a secretary. The board may  
28 hold such additional meetings as may be required in the performance  
29 of its duties. A quorum of the board shall consist of three of its  
30 members. For quorum and voting purposes, board members may attend

31 meetings telephonically or by other live streaming means.

32 7. The staff for the board shall be provided by the director of the  
33 division of professional registration.

34 8. The board may sue and be sued as the professional employer  
35 organization board and the board members need not be named as  
36 parties. Members of the board shall not be personally liable either  
37 jointly or severally for any act committed in the performance of their  
38 official duties as board members. No board member shall be personally  
39 liable for any costs which accrue in any action by or against the board.

40 9. The board shall have a seal which shall be affixed to all  
41 certified copies of records and papers on file and to such other  
42 instruments as the committee may direct. All courts shall take judicial  
43 notice of such seal. Copies of records and proceedings of the board and  
44 of all papers on file with the division on behalf of the board certified  
45 under the seal shall be received as evidence in all courts of record.

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 4. 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 5. A PEO shall not be deemed to engage in any occupation, trade,  
33 profession, or other activity that is subject to licensing, registration, or  
34 certification requirements, or is otherwise regulated by a governmental  
35 entity solely by entering into and maintaining a coemployment  
36 relationship with a covered employee who is subject to such  
37 requirements or regulation.

38 6. 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 7. For purposes of determination of tax credits, economic  
45 incentives, or other benefits provided by this state or other government  
46 entity 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 benefit, incentive, or credit is based  
53 on the number of employees, then each client shall be treated as  
54 employing only those covered employees coemployed by the  
55 client. Covered employees working for other clients of the PEO shall  
56 not be counted. Each PEO shall provide, upon request by a client or an  
57 agency or department of this state, employment information reasonably  
58 required by any agency or department of this state responsible for  
59 administration of any such tax credit, economic incentive, or other

60 benefit that is necessary to support any request, claim, application, or  
61 other action by a client seeking any such tax credit, economic  
62 incentive, or other benefit.

63 8. With respect to a bid, contract, purchase order, or agreement  
64 entered into with the state or a political subdivision of the state, a  
65 client company's status or certification as a minority business  
66 enterprise or a women's business enterprise, as those terms are defined  
67 in section 37.020, shall not be affected because the client company has  
68 entered into an agreement with a PEO or uses the 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 shall 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 principles 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 the effective  
44 date of sections 285.700 to 285.750 shall complete its initial registration  
45 not later than one hundred eighty days after the effective date of  
46 sections 285.700 to 285.750. Such initial registration shall be valid until  
47 one hundred eighty days from the end of the PEO's first fiscal year that  
48 is more than one year after the effective date of sections 285.700 to  
49 285.750.

50       (2) Each PEO not operating within this state as of the effective  
51 date of sections 285.700 to 285.750 shall complete its initial registration  
52 prior to initiating operations within this state. In the event a PEO not  
53 registered in this state becomes aware that an existing client not based  
54 in this state has employees and operations in this state, the PEO shall  
55 either decline to provide PEO services for those employees or notify the  
56 department within five business days of its knowledge of this fact and  
57 file a limited registration application under subsection 6 of this section  
58 or a full business registration if there are more than fifty covered  
59 employees. The department may issue an interim operating permit for  
60 the period the registration applications are pending if the PEO is  
61 currently registered or licensed by another state and the department  
62 determines it to be in the best interest of the potential covered  
63 employees.

64       4. Within one hundred eighty days after the end of a  
65 registration's fiscal year, such registrant shall renew its registration by



66 notifying the department of any changes in the information provided  
67 in such registration's most recent registration or renewal. A  
68 registrant's existing registration shall remain in effect during the  
69 pendency of a renewal application.

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

80       6. (1) A PEO is eligible for a limited registration under sections  
81 285.700 to 285.750 if such PEO:

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

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

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

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

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

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

95       (4) The provisions of section 285.725 shall not apply to applicants  
96 for limited registration.

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

100       8. The department may produce forms necessary to promote the  
101 efficient administration of this section.

102       9. The department shall, to the extent practical, permit the

103 acceptance of electronic filings in conformance with sections 432.200  
104 to 432.295, including applications, documents, reports, and other filings  
105 required by sections 285.700 to 285.750. The department may provide  
106 for the acceptance of electronic filings and other assurance by an  
107 independent and qualified assurance organization approved by the  
108 director that provides satisfactory assurance of compliance acceptable  
109 to the department consistent with or in lieu of the requirements of  
110 sections 285.715 and 285.725 and other requirements of sections 285.700  
111 to 285.750. The director shall permit a PEO to authorize such an  
112 approved assurance organization to act on the PEO's behalf in  
113 complying with the registration requirements of sections 285.700 to  
114 285.750, including electronic filings of information and payment of  
115 registration fees. Use of such an approved assurance organization shall  
116 be optional and not mandatory for a registrant. Nothing in this  
117 subsection shall limit or change the department's authority to register  
118 or terminate registration of a professional employer organization or to  
119 investigate or enforce any provision of sections 285.700 to 285.750.

120       10. All records, reports, and other information obtained from a  
121 PEO under sections 285.700 to 285.750, except to the extent necessary  
122 for the proper administration of sections 285.700 to 285.750 by the  
123 department, shall be confidential and shall not be considered a "public  
124 record" as that term is defined in section 610.010.

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 any fee to be charged for a  
8 group registration.

9       4. Each PEO seeking limited registration shall pay a fee in the  
10 amount not to exceed two hundred fifty dollars upon initial application  
11 for limited registration and upon each renewal of such limited  
12 registration.

13       5. A PEO seeking registration under section 285.715 shall pay an  
14 initial and annual fee not to exceed two hundred fifty dollars.

15       6. No fee charged under sections 285.700 to 285.750 shall exceed

16 the amount reasonably necessary for the administration of sections  
17 285.700 to 285.750.

285.725. Except as provided by 285.715, each PEO or collectively  
2 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.

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 under sections 285.700 to 285.750 or set forth in the  
10 professional employer agreement. The rights, duties, and obligations  
11 of the PEO as coemployer with respect to any covered employee shall  
12 be limited to those arising pursuant to the professional employer  
13 agreement and sections 285.700 to 285.750 during the term of  
14 coemployment by the 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 under sections 285.700 to

22 285.750, the coemployment relationship between the client and the PEO  
23 and between each coemployer and each covered employee shall be  
24 governed by the professional employer agreement. Each professional  
25 employer 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) A requirement that the PEO shall have responsibility to:

29 (a) Pay wages to covered employees;

30 (b) Withhold, collect, report, and remit payroll-related and  
31 unemployment taxes; and

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

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

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

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

52 4. Except to the extent otherwise expressly provided by the  
53 applicable professional employer agreement:

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

57 (2) A client shall be solely responsible for directing, supervising,  
58 training, and controlling the work of the covered employees with

59 respect to the business activities of the client and solely responsible for  
60 the acts, errors, or omissions of the covered employees with regard to  
61 such activities;

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

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

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

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

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

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

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

96 professional employer agreement;

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

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

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, staffleasing, 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 issued by the department under sections 285.700 to 285.750.

20 3. Upon finding, after notice and opportunity for hearing, that  
21 a PEO, a controlling person of a PEO, or a person offering PEO services  
22 has violated one or more provisions of this section and subject to

23 **appeal, the director may:**

24 **(1) Deny an application for a license;**

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

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

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

30 **(5) Issue a cease and desist order.**

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 division  
74 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 under subdivision (10) of section**  
114 **285.705 or a governmental entity as defined in subsection 1 of section 288.030**  
115 **or 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.

138           5. For purposes of this chapter, a taxicab driver shall not be considered  
139 to be an employee of the company that leases the taxicab to the driver or that  
140 provides dispatching or similar rider referral services unless the driver is shown  
141 to be an employee of that company by application of the Internal Revenue Service  
142 twenty-factor right-to-control test.

**375.1750. 1. As used in this section, the following terms mean:**

2           **(1) "Insurer", any insurer authorized to issue a workers'**  
3 **compensation policy covering risks located in this state that has an**  
4 **A.M. Best Company rating below "A-" or no rating and does not have at**  
5 **least two hundred million dollars in surplus;**

6           **(2) "Large deductible agreement", any combination of one or**  
7 **more policies, endorsements, contracts, or security agreements that**  
8 **provide for the policyholder to bear the risk of loss of one hundred**  
9 **thousand dollars or greater per claim or occurrence covered under a**  
10 **policy of workers' compensation insurance and that may be subject to**  
11 **the aggregate limit of policyholder reimbursement obligations.**

12           **2. An insurer shall:**

13           **(1) Require full collateralization of the outstanding obligations**  
14 **owed under a large deductible agreement by using one of the following**  
15 **methods:**

16           **(a) A surety bond issued by a surety insurer authorized to**  
17 **transact business by the department of insurance, financial institutions**  
18 **and professional registration and whose financial strength and size**  
19 **ratings from A.M. Best Company are not less than "A" and "V",**  
20 **respectively;**

21           **(b) An irrevocable letter of credit issued by a financial**  
22 **institution with an office physically located within the state and the**  
23 **deposits of which are federally insured; or**

24           **(c) Cash or securities held in trust by a third party or by the**  
25 **insurer and subject to a trust agreement for the express purpose of**  
26 **securing the policyholder's obligation under a large deductible**  
27 **agreement; provided that, if the assets are held by the insurer, those**  
28 **assets are not commingled with the insurer's other assets; and**

29           **(2) Limit the size of the policyholder's obligations under a large**  
30 **deductible agreement to no greater than twenty percent of the total net**  
31 **worth of the policyholder at each policy inception, as determined by an**

32 **audited financial statement as of the most recently available fiscal year**  
33 **end.**

34 **3. Except if approved by the director of the department of**  
35 **insurance, financial institutions and professional registration, any**  
36 **insurer determined to be in a financially hazardous condition under**  
37 **section 375.535, 375.539, or 375.1175 or other applicable provision of law**  
38 **by the director or the equivalent in any other state is prohibited from**  
39 **issuing or renewing a policy that includes a large deductible**  
40 **agreement.**

41 **4. The provisions of this section shall apply only to large**  
42 **deductible agreements issued or renewed by an insurer on or after**  
43 **January 1, 2018.**

✓

Bill

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