

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 666

AN ACT

To amend chapter 285, RSMo, by adding thereto ten new sections relating to the regulation of the tri-party employment relationship, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Chapter 285, RSMo, is amended by adding thereto
2 ten new sections, to be known as sections 285.075, 285.700,
3 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.740,
4 and 285.750, to read as follows:

5 285.075. 1. Notwithstanding any voluntary agreement
6 entered into between the United States Department of Labor and a
7 franchisee or a franchisor, neither a franchisee nor a
8 franchisee's employee shall be deemed to be an employee of the
9 franchisor for any purpose, unless the franchisor exercises
10 direct and immediate control over the franchisee. Such control
11 shall be found only when the franchisor exercises direct and
12 immediate control over the hiring, termination, discipline, and
13 direction of the franchisee's employees.

14 2. For purposes of this section, the terms "franchisee" and
15 "franchisor" shall have the same meaning as in 16 C.F.R. 436.1.

16 285.700. 1. Sections 285.700 to 285.750 shall be known and
17 may be cited as the "Professional Employer Organization Act".

18 2. The secretary of state or any person designated by the

1 secretary of state may enforce the provisions of sections 285.700
2 to 285.750.

3 285.705. As used in sections 285.700 to 285.750, the
4 following terms mean:

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

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

8 (3) "Coemployment relationship", a relationship that is
9 intended to be an ongoing relationship rather than a temporary or
10 project-specific relationship, wherein the rights, duties, and
11 obligations of an employer that arise out of an employment
12 relationship have been allocated between coemployers pursuant to
13 a professional employer agreement and sections 285.700 to
14 285.750. In such a coemployment relationship:

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

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

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

27 (4) "Covered employee", an individual having a coemployment
28 relationship with a PEO and a client who meets the following

1 criteria:

2 (a) The individual has received written notice of
3 coemployment with the PEO; and

4 (b) The individual's coemployment relationship is pursuant
5 to a professional employer agreement subject to sections 285.700
6 to 285.750.

7 Individuals who are officers, directors, shareholders, partners,
8 and managers of the client will be covered employees, except to
9 the extent the PEO and the client have expressly agreed in the
10 professional employer agreement that such individuals would not
11 be covered employees, provided such individuals meet the criteria
12 of this subdivision and act as operational managers or perform
13 day-to-day operational services for the client;

14 (5) "PEO group", any two or more PEOs that are majority
15 owned or commonly controlled by the same entity, parent, or
16 controlling person;

17 (6) "Person", any individual, partnership, corporation,
18 limited liability company, association, or any other form of
19 legally recognized entity;

20 (7) "Professional employer agreement", a written contract
21 by and between a client and a PEO that provides:

22 (a) For the coemployment of covered employees;

23 (b) For the allocation of employer rights and obligations
24 between the client and the PEO with respect to the covered
25 employees; and

26 (c) That the PEO and the client assume the responsibilities
27 required under sections 285.700 to 285.750;

28 (8) "Professional employer organization" or "PEO", any

1 person engaged in the business of providing professional employer
2 services. A person engaged in the business of providing
3 professional employer services shall be subject to registration
4 and regulation under sections 285.700 to 285.750 regardless of
5 its use of the term or conducting business as a professional
6 employer organization, staff leasing company, registered staff
7 leasing company, employee leasing company, administrative
8 employer, or any other name. The following shall not be deemed
9 to be professional employer organizations or the providing of
10 professional employment services for the purposes of sections
11 285.700 to 285.750:

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

17 (b) Independent contractor arrangements by which a person
18 assumes responsibility for the product produced or service
19 performed by such person or his or her agents and retains and
20 exercises primary direction and control over the work performed
21 by the individuals whose services are supplied under such
22 arrangements; and

23 (c) Providing temporary help services;

24 (9) "Professional employer services", the service of
25 entering into coemployment relationships under sections 285.700
26 to 285.750 in which all or a majority of the employees providing
27 services to a client or to a division or work unit of a client
28 are covered employees;

1 (10) "Registrant", a PEO registered under sections 285.700
2 to 285.750;

3 (11) "Temporary help services", services consisting of a
4 person:

5 (a) Recruiting and hiring its own employees;

6 (b) Finding other organizations that need the services of
7 those employees;

8 (c) Assigning those employees to perform work at or
9 services for the other organizations to support or supplement the
10 other organizations' workforces, or to provide assistance in
11 special work situations including, but not limited to, employee
12 absences, skill shortages, seasonal workloads, or to perform
13 special assignments or projects; and

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

16 285.710. 1. Nothing contained in sections 285.700 to
17 285.750 or in any professional employer agreement shall affect,
18 modify, or amend any collective bargaining agreement or the
19 rights or obligations of any client, PEO, or covered employee
20 under the federal National Labor Relations Act, the federal
21 Railway Labor Act, or sections 105.500 to 105.530.

22 2. Nothing in sections 285.700 to 285.750 or in any
23 professional employer agreement shall:

24 (1) Diminish, abolish, or remove rights of covered
25 employees to a client or obligations of such client to a covered
26 employee existing prior to the effective date of a professional
27 employer agreement;

28 (2) Affect, modify, or amend any contractual relationship

1 or restrictive covenant between a covered employee and any client
2 in effect at the time a professional employer agreement becomes
3 effective. A professional employer agreement shall also not
4 prohibit or amend any contractual relationship or restrictive
5 covenant that is entered into subsequently between a client or a
6 covered employee. A PEO shall have no responsibility or
7 liability in connection with, or arising out of, any such
8 existing or new contractual relationship or restrictive covenant
9 unless the PEO has specifically agreed otherwise in writing; or

10 (3) Create any new or additional enforceable right of a
11 covered employee against a PEO that is not specifically provided
12 by the professional employer agreement or sections 285.700 to
13 285.750.

14 3. Nothing contained in sections 285.700 to 285.750 or any
15 professional employer agreement shall affect, modify, or amend
16 any state, local, or federal licensing, registration, or
17 certification requirement applicable to any client or covered
18 employee.

19 4. A covered employee who shall be licensed, registered, or
20 certified according to law or regulation is deemed solely an
21 employee of the client for purposes of any such license,
22 registration, or certification requirement.

23 5. A PEO shall not be deemed to engage in any occupation,
24 trade, profession, or other activity that is subject to
25 licensing, registration, or certification requirements, or is
26 otherwise regulated by a governmental entity solely by entering
27 into and maintaining a coemployment relationship with a covered
28 employee who is subject to such requirements or regulation.

1 6. A client shall have the sole right of direction and
2 control of the professional or licensed activities of covered
3 employees and of the client's business. Such covered employees
4 and clients shall remain subject to regulation by the regulatory
5 or governmental entity responsible for licensing, registration,
6 or certification of such covered employees or clients.

7 7. For purposes of the determination of tax credits,
8 economic incentives, or other benefits provided by this state or
9 any other government entity and based on employment, covered
10 employees shall be deemed employees solely of the client. A
11 client shall be entitled to the benefit of any tax credit,
12 economic incentive, or other benefit arising as the result of the
13 employment of covered employees of such client. Notwithstanding
14 that the PEO is the W-2 reporting employer, the client shall
15 continue to qualify for such benefit, incentive, or credit. If
16 the grant or amount of any such benefit, incentive, or credit is
17 based on the number of employees, then each client shall be
18 treated as employing only those covered employees coemployed by
19 the client. Covered employees working for other clients of the
20 PEO shall not be counted. Each PEO shall provide, upon request
21 by a client or an agency or department of this state, employment
22 information reasonably required by any agency or department of
23 this state responsible for administration of any such tax credit,
24 economic incentive, or other benefit that is necessary to support
25 any request, claim, application, or other action by a client
26 seeking any such tax credit, economic incentive, or other
27 benefit.

28 8. With respect to a bid, contract, purchase order, or

1 agreement entered into with the state or a political subdivision
2 of the state, a client company's status or certification as a
3 minority business enterprise or a women's business enterprise, as
4 those terms are defined in section 37.020, shall not be affected
5 because the client company has entered into an agreement with a
6 PEO or uses the services of a PEO.

7 285.715. 1. Except as otherwise provided in sections
8 285.700 to 285.750, no person shall provide, advertise, or
9 otherwise hold itself out as providing professional employer
10 services in this state, unless such person is registered under
11 sections 285.700 to 285.750.

12 2. Each applicant for registration under sections 285.700
13 to 285.750 shall provide the secretary of state with the
14 following information:

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

17 (2) The address of the principal place of business of the
18 PEO and the address of each office it maintains in this state;

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

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

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

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

5 (7) A financial statement setting forth the financial
6 condition of the PEO or PEO group. At the time of application
7 for a new license, the applicant shall submit the most recent
8 audit of the applicant, which shall not be older than thirteen
9 months. Thereafter, a PEO or PEO group shall file on an annual
10 basis, within one hundred eighty days after the end of the PEO's
11 or PEO group's fiscal year, a succeeding audit. An applicant may
12 apply for an extension with the secretary of state, but any such
13 request shall be accompanied by a letter from the auditors
14 stating the reasons for the delay and the anticipated audit
15 completion date. The financial statement shall be prepared in
16 accordance with generally accepted accounting principles and
17 audited by an independent certified public accountant licensed to
18 practice in the jurisdiction in which such accountant is located
19 and shall be without qualification as to the going concern status
20 of the PEO. A PEO or PEO group may submit combined or
21 consolidated audited financial statements to meet the
22 requirements of this section. A PEO that has not had sufficient
23 operating history to have audited financials based upon at least
24 twelve months of operating history shall meet the financial
25 capacity requirements of sections 285.700 to 285.750 and present
26 financial statements reviewed by a certified public accountant.

27 3. (1) Each PEO operating within this state as of the
28 effective date of sections 285.700 to 285.750 shall complete its

1 initial registration not later than one hundred eighty days after
2 the effective date of sections 285.700 to 285.750. Such initial
3 registration shall be valid until one hundred eighty days from
4 the end of the PEO's first fiscal year that is more than one year
5 after the effective date of sections 285.700 to 285.750.

6 (2) Each PEO not operating within this state as of the
7 effective date of sections 285.700 to 285.750 shall complete its
8 initial registration prior to initiating operations within this
9 state. In the event a PEO not registered in this state becomes
10 aware that an existing client not based in this state has
11 employees and operations in this state, the PEO shall either
12 decline to provide PEO services for those employees or notify the
13 secretary of state within five business days of its knowledge of
14 this fact and file a limited registration application under
15 subsection 6 of this section or a full business registration if
16 there are more than fifty covered employees. The secretary of
17 state may issue an interim operating permit for the period the
18 registration applications are pending if the PEO is currently
19 registered or licensed by another state and the secretary of
20 state determines it to be in the best interest of the potential
21 covered employees.

22 4. Within one hundred eighty days after the end of a
23 registration's fiscal year, such registrant shall renew its
24 registration by notifying the secretary of state of any changes
25 in the information provided in such registration's most recent
26 registration or renewal. A registrant's existing registration
27 shall remain in effect during the pendency of a renewal
28 application.

1 5. PEOs in a PEO group may satisfy the reporting and
2 financial requirements of sections 285.700 to 285.750 on a
3 combined or consolidated basis, provided that each member of the
4 PEO group guarantees the financial capacity obligations under
5 sections 285.700 to 285.750 of each other member of the PEO
6 group. In the case of a PEO or PEO group that submits a combined
7 or consolidated audited financial statement including entities
8 that are not PEOs or that are not in the PEO group, the
9 controlling entity of the PEO group under the consolidated or
10 combined statement shall guarantee the obligations of the PEOs in
11 the PEO group.

12 6. (1) A PEO is eligible for a limited registration under
13 sections 285.700 to 285.750 if such PEO:

14 (a) Submits a properly executed request for limited
15 registration on a form provided by the secretary of state;

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

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

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

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

25 (3) A PEO seeking limited registration under this section
26 shall provide the secretary of state with information and
27 documentation necessary to show that the PEO qualifies for a
28 limited registration.

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

3 7. The secretary of state shall maintain a list of
4 professional employer organizations registered under sections
5 285.700 to 285.750 that is readily available to the public by
6 electronic or other means.

7 8. The secretary of state may produce forms necessary to
8 promote the efficient administration of this section.

9 9. The secretary of state shall, to the extent practical,
10 permit the acceptance of electronic filings in conformance with
11 sections 432.200 to 432.295, including applications, documents,
12 reports, and other filings required by sections 285.700 to
13 285.750. The secretary of state may provide for the acceptance
14 of electronic filings and other assurance by an independent and
15 qualified assurance organization approved by the secretary of
16 state that provides satisfactory assurance of compliance
17 acceptable to the secretary of state consistent with or in lieu
18 of the requirements of sections 285.715 and 285.725 and other
19 requirements of sections 285.700 to 285.750. The secretary of
20 state shall permit a PEO to authorize such an approved assurance
21 organization to act on the PEO's behalf in complying with the
22 registration requirements of sections 285.700 to 285.750,
23 including electronic filings of information and payment of
24 registration fees. Use of such an approved assurance
25 organization shall be optional and not mandatory for a
26 registrant. Nothing in this subsection shall limit or change the
27 secretary of state's authority to register or terminate
28 registration of a professional employer organization or to

1 investigate or enforce any provision of sections 285.700 to
2 285.750.

3 10. All records, reports, and other information obtained
4 from a PEO under sections 285.700 to 285.750, except to the
5 extent necessary for the proper administration of sections
6 285.700 to 285.750 by the secretary of state, shall be
7 confidential and shall not be considered a "public record" as
8 that term is defined in section 610.010.

9 285.720. 1. Upon filing an initial registration statement
10 under sections 285.700 to 285.750, a PEO shall pay an initial
11 registration fee not to exceed five hundred dollars.

12 2. Upon each annual renewal of a registration statement
13 filed under sections 285.700 to 285.750, a PEO shall pay a
14 renewal fee not to exceed two hundred fifty dollars.

15 3. The secretary of state shall determine any fee to be
16 charged for a group registration.

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

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

24 285.725. Except as provided by 285.715, each PEO or
25 collectively each PEO group shall maintain either:

26 (1) Positive working capital as defined by generally
27 accepted accounting principles at registration as reflected in
28 the financial statements submitted to the secretary of state with

1 the initial registration and each annual renewal; or

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

11 285.730. 1. Except as specifically provided in sections
12 285.700 to 285.750 or in the professional employer agreement, in
13 each coemployment relationship:

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

18 (2) The PEO shall be entitled to exercise only those rights
19 and obligated to perform only those duties and responsibilities
20 specifically required under sections 285.700 to 285.750 or set
21 forth in the professional employer agreement. The rights,
22 duties, and obligations of the PEO as coemployer with respect to
23 any covered employee shall be limited to those arising pursuant
24 to the professional employer agreement and sections 285.700 to
25 285.750 during the term of coemployment by the PEO of such
26 covered employee; and

27 (3) Unless otherwise expressly agreed by the PEO and the
28 client in a professional employer agreement, the client retains

1 the exclusive right to direct and control the covered employees
2 as is necessary to conduct the client's business, to discharge
3 any of the client's fiduciary responsibilities, or to comply with
4 any licensure requirements applicable to the client or to the
5 covered employees.

6 2. Except as specifically provided under sections 285.700
7 to 285.750, the coemployment relationship between the client and
8 the PEO and between each coemployer and each covered employee
9 shall be governed by the professional employer agreement. Each
10 professional employer agreement shall include the following:

11 (1) The allocation of rights, duties, and obligations as
12 described in subsection 1 of this section;

13 (2) A requirement that the PEO shall have responsibility
14 to:

15 (a) Pay wages to covered employees;

16 (b) Withhold, collect, report, and remit payroll-related
17 and unemployment taxes; and

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

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

1 (3) A requirement that the PEO shall have a right to hire,
2 discipline, and terminate a covered employee as may be necessary
3 to fulfill the PEO's responsibilities under sections 285.700 to
4 285.750 and the professional employer agreement. The client
5 shall have a right to hire, discipline, and terminate a covered
6 employee.

7 3. With respect to each professional employer agreement
8 entered into by a PEO, such PEO shall provide written notice to
9 each covered employee affected by such agreement of the general
10 nature of the coemployment relationship between and among the
11 PEO, the client, and such covered employee.

12 4. Except to the extent otherwise expressly provided by the
13 applicable professional employer agreement:

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

17 (2) A client shall be solely responsible for directing,
18 supervising, training, and controlling the work of the covered
19 employees with respect to the business activities of the client
20 and solely responsible for the acts, errors, or omissions of the
21 covered employees with regard to such activities;

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

26 (4) A PEO shall not be liable for the acts, errors, or
27 omissions of a client or of any covered employee of the client if
28 such covered employee is acting under the express direction and

1 control of the client;

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

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

13 5. A PEO under sections 285.700 to 285.750 is not engaged
14 in the sale of insurance or in acting as a third party
15 administrator by offering, marketing, selling, administering, or
16 providing professional employer services that include services
17 and employee benefit plans for covered employees. The provisions
18 of this section shall not supercede or preempt any requirements
19 under section 375.014.

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

22 (1) Any tax or assessment imposed upon professional
23 employer services or any business license or other fee that is
24 based upon "gross receipts" shall allow a deduction from the
25 gross income or receipts of the business derived from performing
26 professional employer services that is equal to that portion of
27 the fee charged to a client that represents the actual cost of
28 wages and salaries, benefits, payroll taxes, withholding, or

1 other assessments paid to or on behalf of a covered employee by
2 the professional employer organization under a professional
3 employer agreement;

4 (2) Any tax assessed or assessment or mandated expenditure
5 on a per capita or per employee basis shall be assessed against
6 the client for covered employees and against the professional
7 employer organization for its employees who are not covered
8 employees coemployed with a client. Benefits or monetary
9 consideration that meet the requirements of mandates imposed on a
10 client and that are received by covered employees through the PEO
11 either through payroll or through benefit plans sponsored by the
12 PEO shall be credited against the client's obligation to fulfill
13 such mandates; and

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

19 285.740. 1. The responsibility to obtain workers'
20 compensation coverage for covered employees in compliance with
21 all applicable laws shall be specifically allocated in the
22 professional employer agreement to either the client or the PEO.

23 2. (1) Coverage for both the directly employed workers of
24 a client and the covered employees of that client shall be all in
25 the residual or all in the voluntary market with the same
26 carrier.

27 (2) Workers' compensation coverage for covered employees in
28 the voluntary market may be obtained by either:

1 (a) The client through a standard workers' compensation
2 policy or through duly authorized self-insurance under section
3 287.280; or

4 (b) The PEO through duly authorized self insurance under
5 section 287.280, through the type of policy referenced under the
6 provisions of 20 CSR 500-6.800(5)(c)2 issued to the PEO by a
7 carrier authorized to do business in this state, or through a
8 multiple coordinated workers' compensation policy issued by a
9 carrier authorized to do business in this state in the name of
10 the PEO or the client.

11 A PEO authorized to self-insure under section 287.280 shall
12 report to the insurer or the appropriate state and rating
13 authorities such client-based information as is necessary to
14 maintain the client's experience rating.

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

22 3. A PEO that applies for coverage or is covered through
23 the voluntary market shall also maintain and furnish to the
24 insurer sufficient information to permit the calculation of an
25 experience modification factor for each client upon termination
26 of the coemployment relationship. Information reported during
27 the term of the coemployment relationship which is used to
28 calculate an experience modification factor for a client prior to

1 and upon termination of the professional employer agreement shall
2 continue to be used in the future experience ratings of the PEO.

3 Such information shall include:

4 (1) The client's corporate name;

5 (2) The client's taxpayer or employer identification
6 number;

7 (3) Payroll summaries and class codes applicable to each
8 client, and, if requested by the insurer, a listing of all
9 covered employees associated with a given client; and

10 (4) Claims information grouped by client, and any other
11 information maintained by or readily available to the PEO that is
12 necessary for the calculation of an experience modification
13 factor for each client.

14 4. In addition to any other provision of chapter 287, any
15 material violations of this section by a PEO is grounds for
16 cancellation or nonrenewal of the PEO's insurance policy by the
17 insurer. If a PEO has received notice that its workers'
18 compensation insurance policy will be canceled or nonrenewed, the
19 PEO shall notify by certified mail, within ten days after the
20 receipt of the notice, all of the clients for which there is a
21 coemployment relationship covered under the policy to be
22 canceled, provided that notice shall not be required if the PEO
23 has obtained another insurance policy from a carrier authorized
24 to do business in this state, with an effective date that is the
25 same as the date of cancellation or nonrenewal.

26 5. If the coemployment relationship with a client is
27 terminated, the client shall utilize an experience modification
28 factor which reflects its individual experience, including, if

1 applicable, experience incurred for covered employees under the
2 professional employer agreement. The PEO shall provide to the
3 client the client's information that is maintained under
4 subsection 3 of this section within five business days of
5 receiving notice from the client or within five business days of
6 providing notice to the client that the coemployment relationship
7 will terminate. The PEO shall also provide such information to
8 any future client insurer, if requested by such client. The PEO
9 shall notify the insurer of its intent to terminate any client
10 relationship prior to termination when feasible. When prior
11 notice is not feasible, the PEO shall notify its insurer within
12 five business days following actual termination.

13 6. Both the client and the PEO shall be considered the
14 employer for purposes of coverage under chapter 287. The
15 protection of the exclusive remedy provision under section
16 287.120 shall apply to the PEO, the client, and to all covered
17 employees and other employees of the client irrespective of which
18 coemployer obtains such workers' compensation coverage. Nothing
19 in this section shall be construed to exempt either the client or
20 the PEO from compliance with the provisions of chapter 287.

21 7. A client may request the information maintained under
22 subsection 3 of this section at any time and every PEO shall
23 provide that information to such client within five business days
24 of receiving such a request.

25 8. In the case of a request for information by a third
26 party requesting verification of a client's experience
27 modification factor for a client in the type of policy referenced
28 under the provisions of 20 CSR 500-6.800(5)(c)2, the PEO shall,

1 within five business days of receipt of receiving the client's
2 consent, provide such third party with only the information
3 maintained by the PEO under subsection 3 of this section. If a
4 client refuses to grant consent to a request for information
5 under this subsection, the PEO shall notify the requesting third
6 party that the client has refused to consent to the disclosure of
7 the information maintained by the PEO under subsection 3 of this
8 section.

9 9. A client shall provide any prospective insurer with the
10 information maintained by the PEO under subsection 3 of this
11 section upon receiving such information from the PEO. Failure to
12 provide a future insurer with such information shall be
13 considered a violation of subsection 6 of section 287.128.

14 10. (1) A client shall notify any prospective insurer of
15 the client's previous or current relationship with a PEO.
16 Failure to provide a future insurer with such information shall
17 be considered a violation of subsection 6 of section 287.128.

18 (2) This subsection shall not apply if the PEO did not
19 provide workers' compensation coverage to a client during the
20 coemployment relationship.

21 11. For purposes of chapter 288, a PEO registered under
22 sections 285.700 to 285.750 shall be treated as a "lesser
23 employing unit" under section 288.032.

24 285.750. 1. A person shall not knowingly:

25 (1) Offer or provide professional employer services or use
26 the names PEO, professional employer organization, staff leasing,
27 employee leasing, administrative employer, or other title
28 representing professional employer services without first

1 becoming registered under sections 285.700 to 285.750; or

2 (2) Provide false or fraudulent information to the
3 secretary of state in conjunction with any registration, renewal,
4 or in any report required under sections 285.700 to 285.750.

5 2. Disciplinary action shall be taken by the secretary of
6 state for violation of this section for:

7 (1) The conviction of a professional employer organization
8 or a controlling person of a PEO of a crime that relates to the
9 operation of a PEO or the ability of the licensee or a
10 controlling person of a licensee to operate a PEO;

11 (2) Knowingly making a material misrepresentation to the
12 secretary of state or other governmental agency; or

13 (3) A willful violation of sections 285.700 to 285.750 or
14 any order issued by the secretary of state under sections 285.700
15 to 285.750.

16 3. Upon finding, after notice and opportunity for hearing,
17 that a PEO, a controlling person of a PEO, or a person offering
18 PEO services has violated one or more provisions of this section
19 and subject to appeal, the secretary of state may:

20 (1) Deny an application for a license;

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

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

24 (4) Place the licensee on probation for the period and
25 subject to conditions that the secretary of state specifies; or

26 (5) Issue a cease and desist order.