

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 600

AN ACT

To amend chapter 285, RSMo, by adding thereto nine new sections relating to professional employer organizations.

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 nine new sections, to be known as sections 285.700, 285.705,
3 285.710, 285.715, 285.720, 285.725, 285.730, 285.740, and
4 285.750, to read as follows:

5 285.700. 1. Sections 285.700 to 285.750 shall be known and
6 may be cited as the "Professional Employer Organization Act".

7 2. The secretary of state or any person designated by the
8 secretary of state may enforce the provisions of sections 285.700
9 to 285.750.

10 285.705. As used in sections 285.700 to 285.750, the
11 following terms mean:

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

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

15 (3) "Coemployment relationship", a relationship that is
16 intended to be an ongoing relationship rather than a temporary or

1 project-specific relationship, wherein the rights, duties, and
2 obligations of an employer that arise out of an employment
3 relationship have been allocated between coemployers pursuant to
4 a professional employer agreement and sections 285.700 to
5 285.750. In such a coemployment relationship:

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

10 (b) The client is entitled to enforce those rights and
11 obligated to provide and perform those employer obligations
12 allocated to such client by the professional employer agreement
13 and sections 285.700 to 285.750; and

14 (c) The client is entitled to enforce any right and
15 obligated to perform any obligation of an employer not
16 specifically allocated to the PEO by the professional employer
17 agreement or sections 285.700 to 285.750;

18 (4) "Covered employee", an individual having a coemployment
19 relationship with a PEO and a client who meets the following
20 criteria:

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

23 (b) The individual's coemployment relationship is pursuant
24 to a professional employer agreement subject to sections 285.700
25 to 285.750.

26
27 Individuals who are officers, directors, shareholders, partners,
28 and managers of the client will be covered employees, except to

1 the extent the PEO and the client have expressly agreed in the
2 professional employer agreement that such individuals would not
3 be covered employees, provided such individuals meet the criteria
4 of this subdivision and act as operational managers or perform
5 day-to-day operational services for the client;

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

9 (6) "Person", any individual, partnership, corporation,
10 limited liability company, association, or any other form of
11 legally recognized entity;

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

14 (a) For the coemployment of covered employees;

15 (b) For the allocation of employer rights and obligations
16 between the client and the PEO with respect to the covered
17 employees; and

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

20 (8) "Professional employer organization" or "PEO", any
21 person engaged in the business of providing professional employer
22 services. A person engaged in the business of providing
23 professional employer services shall be subject to registration
24 and regulation under sections 285.700 to 285.750 regardless of
25 its use of the term or conducting business as a professional
26 employer organization, staff leasing company, registered staff
27 leasing company, employee leasing company, administrative
28 employer, or any other name. The following shall not be deemed

1 to be professional employer organizations or the providing of
2 professional employment services for the purposes of sections
3 285.700 to 285.750:

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

9 (b) Independent contractor arrangements by which a person
10 assumes responsibility for the product produced or service
11 performed by such person or his or her agents and retains and
12 exercises primary direction and control over the work performed
13 by the individuals whose services are supplied under such
14 arrangements; and

15 (c) Providing temporary help services;

16 (9) "Professional employer services", the service of
17 entering into coemployment relationships under sections 285.700
18 to 285.750 in which all or a majority of the employees providing
19 services to a client or to a division or work unit of a client
20 are covered employees;

21 (10) "Registrant", a PEO registered under sections 285.700
22 to 285.750;

23 (11) "Temporary help services", services consisting of a
24 person:

25 (a) Recruiting and hiring its own employees;

26 (b) Finding other organizations that need the services of
27 those employees;

28 (c) Assigning those employees to perform work at or

1 services for the other organizations to support or supplement the
2 other organizations' workforces, or to provide assistance in
3 special work situations including, but not limited to, employee
4 absences, skill shortages, seasonal workloads, or to perform
5 special assignments or projects; and

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

8 285.710. 1. Nothing contained in sections 285.700 to
9 285.750 or in any professional employer agreement shall affect,
10 modify, or amend any collective bargaining agreement or the
11 rights or obligations of any client, PEO, or covered employee
12 under the federal National Labor Relations Act, the federal
13 Railway Labor Act, or sections 105.500 to 105.530.

14 2. Nothing in sections 285.700 to 285.750 or in any
15 professional employer agreement shall:

16 (1) Diminish, abolish, or remove rights of covered
17 employees to a client or obligations of such client to a covered
18 employee existing prior to the effective date of a professional
19 employer agreement;

20 (2) Affect, modify, or amend any contractual relationship
21 or restrictive covenant between a covered employee and any client
22 in effect at the time a professional employer agreement becomes
23 effective. A professional employer agreement shall also not
24 prohibit or amend any contractual relationship or restrictive
25 covenant that is entered into subsequently between a client or a
26 covered employee. A PEO shall have no responsibility or
27 liability in connection with, or arising out of, any such
28 existing or new contractual relationship or restrictive covenant

1 unless the PEO has specifically agreed otherwise in writing; or

2 (3) Create any new or additional enforceable right of a
3 covered employee against a PEO that is not specifically provided
4 by the professional employer agreement or sections 285.700 to
5 285.750.

6 3. Nothing contained in sections 285.700 to 285.750 or any
7 professional employer agreement shall affect, modify, or amend
8 any state, local, or federal licensing, registration, or
9 certification requirement applicable to any client or covered
10 employee.

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

15 5. A PEO shall not be deemed to engage in any occupation,
16 trade, profession, or other activity that is subject to
17 licensing, registration, or certification requirements, or is
18 otherwise regulated by a governmental entity solely by entering
19 into and maintaining a coemployment relationship with a covered
20 employee who is subject to such requirements or regulation.

21 6. A client shall have the sole right of direction and
22 control of the professional or licensed activities of covered
23 employees and of the client's business. Such covered employees
24 and clients shall remain subject to regulation by the regulatory
25 or governmental entity responsible for licensing, registration,
26 or certification of such covered employees or clients.

27 7. For purposes of the determination of tax credits,
28 economic incentives, or other benefits provided by this state or

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

20 8. With respect to a bid, contract, purchase order, or
21 agreement entered into with the state or a political subdivision
22 of the state, a client company's status or certification as a
23 minority business enterprise or a women's business enterprise, as
24 those terms are defined in section 37.020, shall not be affected
25 because the client company has entered into an agreement with a
26 PEO or uses the services of a PEO.

27 285.715. 1. Except as otherwise provided in sections
28 285.700 to 285.750, no person shall provide, advertise, or

1 otherwise hold itself out as providing professional employer
2 services in this state, unless such person is registered under
3 sections 285.700 to 285.750.

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

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

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

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

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

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

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

25 (7) A financial statement setting forth the financial
26 condition of the PEO or PEO group. At the time of application
27 for a new license, the applicant shall submit the most recent
28 audit of the applicant, which shall not be older than thirteen

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

19 3. (1) Each PEO operating within this state as of the
20 effective date of sections 285.700 to 285.750 shall complete its
21 initial registration not later than one hundred eighty days after
22 the effective date of sections 285.700 to 285.750. Such initial
23 registration shall be valid until one hundred eighty days from
24 the end of the PEO's first fiscal year that is more than one year
25 after the effective date of sections 285.700 to 285.750.

26 (2) Each PEO not operating within this state as of the
27 effective date of sections 285.700 to 285.750 shall complete its
28 initial registration prior to initiating operations within this

1 state. In the event a PEO not registered in this state becomes
2 aware that an existing client not based in this state has
3 employees and operations in this state, the PEO shall either
4 decline to provide PEO services for those employees or notify the
5 secretary of state within five business days of its knowledge of
6 this fact and file a limited registration application under
7 subsection 6 of this section or a full business registration if
8 there are more than fifty covered employees. The secretary of
9 state may issue an interim operating permit for the period the
10 registration applications are pending if the PEO is currently
11 registered or licensed by another state and the secretary of
12 state determines it to be in the best interest of the potential
13 covered employees.

14 4. Within one hundred eighty days after the end of a
15 registration's fiscal year, such registrant shall renew its
16 registration by notifying the secretary of state of any changes
17 in the information provided in such registration's most recent
18 registration or renewal. A registrant's existing registration
19 shall remain in effect during the pendency of a renewal
20 application.

21 5. PEOs in a PEO group may satisfy the reporting and
22 financial requirements of sections 285.700 to 285.750 on a
23 combined or consolidated basis, provided that each member of the
24 PEO group guarantees the financial capacity obligations under
25 sections 285.700 to 285.750 of each other member of the PEO
26 group. In the case of a PEO or PEO group that submits a combined
27 or consolidated audited financial statement including entities
28 that are not PEOs or that are not in the PEO group, the

1 controlling entity of the PEO group under the consolidated or
2 combined statement shall guarantee the obligations of the PEOs in
3 the PEO group.

4 6. (1) A PEO is eligible for a limited registration under
5 sections 285.700 to 285.750 if such PEO:

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

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

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

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

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

17 (3) A PEO seeking limited registration under this section
18 shall provide the secretary of state with information and
19 documentation necessary to show that the PEO qualifies for a
20 limited registration.

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

23 7. The secretary of state shall maintain a list of
24 professional employer organizations registered under sections
25 285.700 to 285.750 that is readily available to the public by
26 electronic or other means.

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

1 9. The secretary of state shall, to the extent practical,
2 permit the acceptance of electronic filings in conformance with
3 sections 432.200 to 432.295, including applications, documents,
4 reports, and other filings required by sections 285.700 to
5 285.750. The secretary of state may provide for the acceptance
6 of electronic filings and other assurance by an independent and
7 qualified assurance organization approved by the secretary of
8 state that provides satisfactory assurance of compliance
9 acceptable to the secretary of state consistent with or in lieu
10 of the requirements of sections 285.715 and 285.725 and other
11 requirements of sections 285.700 to 285.750. The secretary of
12 state shall permit a PEO to authorize such an approved assurance
13 organization to act on the PEO's behalf in complying with the
14 registration requirements of sections 285.700 to 285.750,
15 including electronic filings of information and payment of
16 registration fees. Use of such an approved assurance
17 organization shall be optional and not mandatory for a
18 registrant. Nothing in this subsection shall limit or change the
19 secretary of state's authority to register or terminate
20 registration of a professional employer organization or to
21 investigate or enforce any provision of sections 285.700 to
22 285.750.

23 10. All records, reports, and other information obtained
24 from a PEO under sections 285.700 to 285.750, except to the
25 extent necessary for the proper administration of sections
26 285.700 to 285.750 by the secretary of state, shall be
27 confidential and shall not be considered a "public record" as
28 that term is defined in section 610.010.

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

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

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

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

13 5. No fee charged under sections 285.700 to 285.750 shall
14 exceed the amount reasonably necessary for the administration of
15 sections 285.700 to 285.750.

16 285.725. Except as provided by 285.715, each PEO or
17 collectively each PEO group shall maintain either:

18 (1) Positive working capital as defined by generally
19 accepted accounting principles at registration as reflected in
20 the financial statements submitted to the secretary of state with
21 the initial registration and each annual renewal; or

22 (2) A PEO or PEO group that does not have positive working
23 capital may provide a bond, irrevocable letter of credit, or
24 securities with a minimum market value equaling the deficiency
25 plus one hundred thousand dollars to the secretary of state.
26 Such bond is to be held by a depository designated by the
27 secretary of state securing payment by the PEO of all taxes,
28 wages, benefits, or other entitlement due to or with respect to

1 covered employees if the PEO does not make such payments when
2 due.

3 285.730. 1. Except as specifically provided in sections
4 285.700 to 285.750 or in the professional employer agreement, in
5 each coemployment relationship:

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

10 (2) The PEO shall be entitled to exercise only those rights
11 and obligated to perform only those duties and responsibilities
12 specifically required under sections 285.700 to 285.750 or set
13 forth in the professional employer agreement. The rights,
14 duties, and obligations of the PEO as coemployer with respect to
15 any covered employee shall be limited to those arising pursuant
16 to the professional employer agreement and sections 285.700 to
17 285.750 during the term of coemployment by the PEO of such
18 covered employee; and

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

26 2. Except as specifically provided under sections 285.700
27 to 285.750, the coemployment relationship between the client and
28 the PEO and between each coemployer and each covered employee

1 shall be governed by the professional employer agreement. Each
2 professional employer agreement shall include the following:

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

5 (2) A requirement that the PEO shall have responsibility
6 to:

7 (a) Pay wages to covered employees;

8 (b) Withhold, collect, report, and remit payroll-related
9 and unemployment taxes; and

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

13
14 As used in this section, the term "wages" does not include any
15 obligation between a client and a covered employee for payments
16 beyond or in addition to the covered employee's salary, draw, or
17 regular rate of pay, such as bonuses, commissions, severance pay,
18 deferred compensation, profit sharing, vacation, sick, or other
19 paid-time off pay, unless the PEO has expressly agreed to assume
20 liability for such payments in the professional employer
21 agreement; and

22 (3) A requirement that the PEO shall have a right to hire,
23 discipline, and terminate a covered employee as may be necessary
24 to fulfill the PEO's responsibilities under sections 285.700 to
25 285.750 and the professional employer agreement. The client
26 shall have a right to hire, discipline, and terminate a covered
27 employee.

28 3. With respect to each professional employer agreement

1 entered into by a PEO, such PEO shall provide written notice to
2 each covered employee affected by such agreement of the general
3 nature of the coemployment relationship between and among the
4 PEO, the client, and such covered employee.

5 4. Except to the extent otherwise expressly provided by the
6 applicable professional employer agreement:

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

10 (2) A client shall be solely responsible for directing,
11 supervising, training, and controlling the work of the covered
12 employees with respect to the business activities of the client
13 and solely responsible for the acts, errors, or omissions of the
14 covered employees with regard to such activities;

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

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

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

26 (6) A covered employee is not, solely as the result of
27 being a covered employee of a PEO, an employee of the PEO for
28 purposes of general liability insurance, fidelity bonds, surety

1 bonds, employer's liability that is not covered by workers'
2 compensation, or liquor liability insurance carried by the PEO
3 unless the covered employees are included by specific reference
4 in the professional employer agreement and applicable prearranged
5 employment contract, insurance contract, or bond.

6 5. A PEO under sections 285.700 to 285.750 is not engaged
7 in the sale of insurance or in acting as a third party
8 administrator by offering, marketing, selling, administering, or
9 providing professional employer services that include services
10 and employee benefit plans for covered employees. The provisions
11 of this section shall not supercede or preempt any requirements
12 under section 375.014.

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

15 (1) Any tax or assessment imposed upon professional
16 employer services or any business license or other fee that is
17 based upon "gross receipts" shall allow a deduction from the
18 gross income or receipts of the business derived from performing
19 professional employer services that is equal to that portion of
20 the fee charged to a client that represents the actual cost of
21 wages and salaries, benefits, payroll taxes, withholding, or
22 other assessments paid to or on behalf of a covered employee by
23 the professional employer organization under a professional
24 employer agreement;

25 (2) Any tax assessed or assessment or mandated expenditure
26 on a per capita or per employee basis shall be assessed against
27 the client for covered employees and against the professional
28 employer organization for its employees who are not covered

1 employees coemployed with a client. Benefits or monetary
2 consideration that meet the requirements of mandates imposed on a
3 client and that are received by covered employees through the PEO
4 either through payroll or through benefit plans sponsored by the
5 PEO shall be credited against the client's obligation to fulfill
6 such mandates; and

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

12 285.740. 1. The responsibility to obtain workers'
13 compensation coverage for covered employees in compliance with
14 all applicable laws shall be specifically allocated in the
15 professional employer agreement to either the client or the PEO.

16 2. (1) Coverage for both the directly employed workers of
17 a client and the covered employees of that client shall be all in
18 the residual or all in the voluntary market with the same
19 carrier.

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

22 (a) The client through a standard workers' compensation
23 policy or through duly authorized self-insurance under section
24 287.280; or

25 (b) The PEO through duly authorized self insurance under
26 section 287.280, through the type of policy referenced under the
27 provisions of 20 CSR 500-6.800(5)(c)2 issued to the PEO by a
28 carrier authorized to do business in this state, or through a

1 multiple coordinated workers' compensation policy issued by a
2 carrier authorized to do business in this state in the name of
3 the PEO or the client.

4
5 A PEO authorized to self-insure under section 287.280 shall
6 report to the insurer or the appropriate state and rating
7 authorities such client-based information as is necessary to
8 maintain the client's experience rating.

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

16 3. A PEO that applies for coverage or is covered through
17 the voluntary market shall also maintain and furnish to the
18 insurer sufficient information to permit the calculation of an
19 experience modification factor for each client upon termination
20 of the coemployment relationship. Information reported during
21 the term of the coemployment relationship which is used to
22 calculate an experience modification factor for a client prior to
23 and upon termination of the professional employer agreement shall
24 continue to be used in the future experience ratings of the PEO.
25 Such information shall include:

26 (1) The client's corporate name;

27 (2) The client's taxpayer or employer identification
28 number;

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

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

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

20 5. If the coemployment relationship with a client is
21 terminated, the client shall utilize an experience modification
22 factor which reflects its individual experience, including, if
23 applicable, experience incurred for covered employees under the
24 professional employer agreement. The PEO shall provide to the
25 client the client's information that is maintained under
26 subsection 3 of this section within five business days of
27 receiving notice from the client or within five business days of
28 providing notice to the client that the coemployment relationship

1 will terminate. The PEO shall also provide such information to
2 any future client insurer, if requested by such client. The PEO
3 shall notify the insurer of its intent to terminate any client
4 relationship prior to termination when feasible. When prior
5 notice is not feasible, the PEO shall notify its insurer within
6 five business days following actual termination.

7 6. Both the client and the PEO shall be considered the
8 employer for purposes of coverage under chapter 287. The
9 protection of the exclusive remedy provision under section
10 287.120 shall apply to the PEO, the client, and to all covered
11 employees and other employees of the client irrespective of which
12 coemployer obtains such workers' compensation coverage. Nothing
13 in this section shall be construed to exempt either the client or
14 the PEO from compliance with the provisions of chapter 287.

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

19 8. In the case of a request for information by a third
20 party requesting verification of a client's experience
21 modification factor for a client in the type of policy referenced
22 under the provisions of 20 CSR 500-6.800(5)(c)2, the PEO shall,
23 within five business days of receipt of receiving the client's
24 consent, provide such third party with only the information
25 maintained by the PEO under subsection 3 of this section. If a
26 client refuses to grant consent to a request for information
27 under this subsection, the PEO shall notify the requesting third
28 party that the client has refused to consent to the disclosure of

1 the information maintained by the PEO under subsection 3 of this
2 section.

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

8 10. (1) A client shall notify any prospective insurer of
9 the client's previous or current relationship with a PEO.
10 Failure to provide a future insurer with such information shall
11 be considered a violation of subsection 6 of section 287.128.

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

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

18 285.750. 1. A person shall not knowingly:

19 (1) Offer or provide professional employer services or use
20 the names PEO, professional employer organization, staff leasing,
21 employee leasing, administrative employer, or other title
22 representing professional employer services without first
23 becoming registered under sections 285.700 to 285.750; or

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

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

1 (1) The conviction of a professional employer organization
2 or a controlling person of a PEO of a crime that relates to the
3 operation of a PEO or the ability of the licensee or a
4 controlling person of a licensee to operate a PEO;

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

7 (3) A willful violation of sections 285.700 to 285.750 or
8 any order issued by the secretary of state under sections 285.700
9 to 285.750.

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

14 (1) Deny an application for a license;

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

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

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

20 (5) Issue a cease and desist order.