

SENATE BILL NO. 904

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOSKINS.

4300S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 285.730, RSMo, and to enact in lieu thereof one new section relating to professional employer organizations.

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

Section A. Section 285.730, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 285.730,
3 to read as follows:

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

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

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

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

26 2. Except as specifically provided under sections
27 285.700 to 285.750, the coemployment relationship between
28 the client and the PEO and between each coemployer and each
29 covered employee shall be governed by the professional
30 employer agreement. Each professional employer agreement
31 shall include the following:

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

34 (2) A requirement that the PEO shall have
35 responsibility to:

36 (a) Pay wages to covered employees;

37 (b) Withhold, collect, report, and remit payroll-
38 related and unemployment taxes; and

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

42 As used in this section, the term "wages" does not include
43 any obligation between a client and a covered employee for
44 payments beyond or in addition to the covered employee's
45 salary, draw, or regular rate of pay, such as bonuses,
46 commissions, severance pay, deferred compensation, profit
47 sharing, vacation, sick, or other paid-time off pay, unless

48 the PEO has expressly agreed to assume liability for such
49 payments in the professional employer agreement; and

50 (3) A requirement that the PEO shall have a right to
51 hire, discipline, and terminate a covered employee as may be
52 necessary to fulfill the PEO's responsibilities under
53 sections 285.700 to 285.750 and the professional employer
54 agreement. The client shall have a right to hire,
55 discipline, and terminate a covered employee.

56 3. With respect to each professional employer
57 agreement entered into by a PEO, such PEO shall provide
58 written notice to each covered employee affected by such
59 agreement of the general nature of the coemployment
60 relationship between and among the PEO, the client, and such
61 covered employee.

62 4. Except to the extent otherwise expressly provided
63 by the applicable professional employer agreement:

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

67 (2) A client shall be solely responsible for
68 directing, supervising, training, and controlling the work
69 of the covered employees with respect to the business
70 activities of the client and solely responsible for the
71 acts, errors, or omissions of the covered employees with
72 regard to such activities;

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

77 (4) A PEO shall not be liable for the acts, errors, or
78 omissions of a client or of any covered employee of the

79 client if such covered employee is acting under the express
80 direction and control of the client;

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

84 (6) A covered employee is not, solely as the result of
85 being a covered employee of a PEO, an employee of the PEO
86 for purposes of general liability insurance, fidelity bonds,
87 surety bonds, employer's liability that is not covered by
88 workers' compensation, or liquor liability insurance carried
89 by the PEO unless the covered employees are included by
90 specific reference in the professional employer agreement
91 and applicable prearranged employment contract, insurance
92 contract, or bond.

93 5. A PEO under sections 285.700 to 285.750 is not
94 engaged in the sale of insurance or in acting as a third-
95 party administrator by offering, marketing, selling,
96 administering, or providing professional employer services
97 that include services and employee benefit plans for covered
98 employees. **A client and a registered professional employer
99 organization shall each be deemed an employer under the laws
100 of this state for purposes of sponsoring retirement and
101 welfare benefits plans for its covered employees. A fully
102 insured welfare benefit plan sponsored by a registered
103 professional employer organization for the benefit of its
104 covered employees shall be treated for the purposes of state
105 law as a single employer welfare benefit plan. For purposes
106 of sponsoring welfare benefit plans for its eligible covered
107 employees, a registered professional employer organization
108 shall be considered the employer of all of its eligible
109 covered employees, and all eligible covered employees of one
110 or more clients participating in a health benefit plan**

111 **sponsored by a registered professional employer organization**
112 **shall be considered employees of such registered**
113 **professional employer organization.** The provisions of this
114 section shall not supersede or preempt any requirements
115 under section 375.014.

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

118 (1) Any tax or assessment imposed upon professional
119 employer services or any business license or other fee that
120 is based upon gross receipts shall allow a deduction from
121 the gross income or receipts of the business derived from
122 performing professional employer services that is equal to
123 that portion of the fee charged to a client that represents
124 the actual cost of wages and salaries, benefits, payroll
125 taxes, withholding, or other assessments paid to or on
126 behalf of a covered employee by the professional employer
127 organization under a professional employer agreement;

128 (2) Any tax assessed or assessment or mandated
129 expenditure on a per-capita or per-employee basis shall be
130 assessed against the client for covered employees and
131 against the professional employer organization for its
132 employees who are not covered employees coemployed with a
133 client. Benefits or monetary consideration that meet the
134 requirements of mandates imposed on a client and that are
135 received by covered employees through the PEO either through
136 payroll or through benefit plans sponsored by the PEO shall
137 be credited against the client's obligation to fulfill such
138 mandates; and

139 (3) In the case of a tax or an assessment imposed or
140 calculated upon the basis of total payroll, the professional
141 employer organization shall be eligible to apply any small

142 business allowance or exemption available to the client for
143 the covered employees for purposes of computing the tax.

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