

MAR 15 2005
Place On Calendar

HOUSE FILE 791
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 21)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the recognition and licensing of professional
2 employer organizations and providing for penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 791

1 Section 1. NEW SECTION. 95.1 PURPOSE AND INTENT.

2 The general assembly finds that professional employer
3 organizations provide a valuable service to commerce and the
4 citizens of this state by increasing the opportunities of
5 employers to develop cost-effective methods of satisfying
6 their personnel requirements and providing employees with
7 access to certain employment benefits which might otherwise
8 not be available to them.

9 The general assembly further finds that professional
10 employer organizations operating in this state should be
11 properly recognized and regulated by the department of
12 workforce development, as provided in this chapter, and that
13 any allocation of the employer duties and responsibilities
14 pursuant to this chapter will preserve all rights to which
15 covered employees would be entitled under a traditional
16 employment relationship.

17 Sec. 2. NEW SECTION. 95.2 DEFINITIONS.

18 As used in this chapter, unless the context otherwise
19 requires:

20 1. "Administrative fee" means the fee charged to a client
21 by a professional employer organization for professional
22 employer services. However, the administrative fee shall not
23 be deemed to include any amount of a fee by the professional
24 employer organization that is for wages and salaries,
25 benefits, workers' compensation, payroll taxes, withholding,
26 or other assessments paid by the professional employer
27 organization to or on behalf of covered employees under the
28 professional employer agreement.

29 2. "Client" means any person who enters into a
30 professional employer agreement with a professional employer
31 organization.

32 3. "Coemployer" means either a professional employer
33 organization or a client.

34 4. "Coemployment relationship" means all of the following:

35 a. As between coemployers, a relationship whereby the

1 rights, duties, and obligations of an employer which arise out
2 of an employment relationship have been allocated between
3 coemployers pursuant to a professional employer agreement and
4 this chapter, and which is intended to be an ongoing
5 relationship, rather than a temporary or project-specific
6 relationship.

7 b. As between each professional employer organization and
8 a covered employee as to whom a professional employer
9 agreement applies, an employment relationship whereby such
10 professional employer organization is entitled to enforce
11 those rights, and obligated to perform those duties and
12 obligations, allocated to such professional employer
13 organization by the professional employer agreement and this
14 chapter.

15 c. As between each client and a covered employee to whom a
16 professional employer agreement applies, an employment
17 relationship whereby such client is entitled to enforce those
18 rights, and obligated to provide and perform those employer
19 obligations allocated to such client by the professional
20 employer agreement and this chapter and whereby such client is
21 responsible for any employer right or obligation not otherwise
22 allocated by the professional employer agreement or this
23 chapter.

24 d. As to rights enforceable by an employee under state
25 law, covered employees shall be entitled to enforce against
26 the professional employer organization all of the following
27 rights:

28 (1) Those allocated to such professional employer
29 organization by the professional employer agreement and this
30 chapter.

31 (2) Those shared by the professional employer organization
32 and the client under the professional employer agreement and
33 this chapter.

34 (3) All other rights, duties, and obligations enforceable
35 by an employee against the client pursuant to state law.

1 5. "Covered employee" means an individual having a
2 coemployment relationship with a professional employer
3 organization and a client, who meets all of the following
4 criteria:

5 a. The individual is a party to a coemployment
6 relationship with a professional employer organization and a
7 client.

8 b. The individual's coemployment relationship is pursuant
9 to a professional employer agreement subject to this chapter.

10 c. The individual has received written notice of an
11 agreement between a professional employer organization and a
12 client. Such notice shall include the name of the client or
13 professional employer organization that has obtained workers'
14 compensation coverage for the covered employee.

15 Individuals who are officers, directors, shareholders,
16 partners, and managers of the client will be covered employees
17 to the extent the professional employer organization and the
18 client have expressly agreed in the professional employer
19 agreement that such individuals would be covered employees and
20 provided such individuals meet the criteria of this subsection
21 and act as operational managers or perform services for the
22 client.

23 6. "Department" means the department of workforce
24 development.

25 7. "Director" means the director of the department of
26 workforce development.

27 8. "Licensee" means a professional employer organization
28 licensed under this chapter.

29 9. "Person" means a person as defined in section 4.1.

30 10. "Professional employer agreement" means a written
31 contract by and between a client and a professional employer
32 organization that provides all of the following:

33 a. For the coemployment of covered employees.

34 b. For the allocation and sharing between the client and
35 the professional employer organization employer

1 responsibilities, including hiring, firing, and disciplining,
2 with respect to the covered employees.

3 c. That the professional employer organization and the
4 client assume the responsibilities required by this chapter.

5 11. "Professional employer organization" means any person
6 engaged in the business of providing professional employer
7 services.

8 a. A person engaged in the business of providing
9 professional employer services shall be subject to
10 registration and regulation under this chapter regardless of
11 its use of the term "professional employer organization",
12 "PEO", "staff leasing company", "licensed staff leasing
13 company", "employee leasing company", or any other similar
14 name.

15 b. None of the following shall be deemed to be a
16 professional employer organization or professional employer
17 services for purposes of this chapter:

18 (1) Arrangements by which a person, whose principal
19 business activity is not entering into professional employer
20 arrangements and who does not hold itself out as a
21 professional employer organization, shares employees with a
22 commonly owned company within the meaning of section 414(b)
23 and (c) of the Internal Revenue Code of 1986, as amended.

24 (2) Arrangements by which a person assumes responsibility
25 for the product produced or service performed by such person
26 or the person's agents and retains and exercises primary
27 direction and control over the work performed by the
28 individuals whose services are supplied under such
29 arrangements.

30 (3) Providing temporary help services.

31 12. "Professional employer services" means the service of
32 entering into coemployment relationships under this chapter.

33 13. "Temporary help services" means services pursuant to
34 which a person does all of the following:

35 a. Recruits and hires employees.

1 b. Finds other organizations that need the services of
2 those employees.

3 c. Assigns those employees to perform work or services for
4 the other organizations to support or supplement the other
5 organizations' workforces, or to provide assistance in special
6 work situations such as, but not limited to, employee
7 absences, skill shortages, seasonal workloads, or to perform
8 special assignments or projects.

9 d. Customarily attempts to reassign the employees to other
10 organizations when they finish each assignment.

11 Sec. 3. NEW SECTION. 95.3 RIGHTS, DUTIES, AND
12 OBLIGATIONS.

13 1. COLLECTIVE BARGAINING AGREEMENTS. Nothing contained in
14 this chapter or in any professional employer agreement shall
15 affect, modify, or amend any collective bargaining agreement
16 or the rights or obligations of any client, professional
17 employer organization, or covered employee under the federal
18 National Labor Relations Act, the federal Railway Labor Act,
19 or the public employment relations Act in chapter 20. A
20 professional employer organization shall recognize and honor
21 any requirements or obligations of the client or a covered
22 employee under a collective bargaining agreement.

23 2. LICENSING.

24 a. Nothing contained in this chapter or any professional
25 employer agreement shall affect, modify, or amend any state,
26 local, or federal licensing, registration, or certification
27 requirement applicable to any client or covered employee. A
28 covered employee who must be licensed, registered, or
29 certified according to law or regulation is deemed solely an
30 employee of the client for purposes of any such license,
31 registration, or certification requirement.

32 b. A professional employer organization shall not be
33 deemed to engage in any occupation, trade, profession, or
34 other activity that is subject to licensing, registration, or
35 certification requirements, or is otherwise regulated by a

1 governmental entity solely by entering into and maintaining a
2 coemployment relationship with a covered employee who is
3 subject to such requirements or regulation.

4 c. Unless otherwise expressly agreed to by the client in
5 the professional employer agreement, a client shall have the
6 sole right to direct and control the professional or licensed
7 activities of covered employees and of the client's business.

8 3. TAX CREDITS AND OTHER INCENTIVES. For purposes of
9 determination of tax credits and other economic incentives
10 provided by this state and based on employment, covered
11 employees shall be deemed employees solely of the client. A
12 client shall be entitled to the benefit of any tax credit,
13 economic incentive, or other benefit arising as the result of
14 the employment of covered employees of such client. If the
15 grant or amount of any such incentives is based on the number
16 of employees, then each client shall be treated as employing
17 only those covered employees actually working in the client's
18 business operations and covered employees working for other
19 clients of the professional employer organization shall not be
20 counted. Each professional employer organization shall
21 provide, upon request by a client or an agency or department
22 of this state, employment information reasonably required by
23 any agency or department of this state responsible for
24 administration of any such tax credit or economic incentive
25 and necessary to support any request, claim, application, or
26 other action by a client seeking any such tax credit or
27 economic incentive.

28 4. DISADVANTAGED BUSINESS. With respect to a bid,
29 contract, purchase order, or agreement entered into with the
30 state or a political subdivision of the state, a client
31 company's status or certification as a small, minority-owned,
32 disadvantaged, or woman-owned business enterprise or as a
33 historically underutilized business is not affected because
34 the client company has entered into an agreement with a
35 professional employer organization or uses the services of a

1 professional employer organization.

2 Sec. 4. NEW SECTION. 95.4 LICENSING REQUIREMENTS.

3 1. LICENSE REQUIRED. Except as otherwise provided in this
4 chapter, a person shall not provide, advertise, or otherwise
5 hold itself out as providing professional employer services in
6 this state, unless such person is licensed under this chapter.

7 2. LICENSING INFORMATION. Each applicant for licensure
8 under this chapter shall provide the department with all of
9 the following information:

10 a. The name or names under which the professional employer
11 organization conducts business.

12 b. The address of the principal place of business of the
13 professional employer organization and the address of each
14 office it maintains in this state.

15 c. The professional employer organization's taxpayer or
16 employer identification number.

17 d. A list by jurisdiction of each name under which the
18 professional employer organization has operated in the
19 preceding five years, including any alternative names, names
20 of predecessors, and if known, successor business entities.

21 e. A statement of ownership, which shall include the name
22 and evidence of the business experience of any person that,
23 individually or acting in concert with one or more other
24 persons, owns or controls, directly or indirectly, twenty-five
25 percent or more of the equity interests of the professional
26 employer organization.

27 f. A statement of management, which shall include the name
28 and evidence of the business experience of any person who
29 serves as president, chief executive officer, or otherwise has
30 the authority to act as senior executive officer of the
31 professional employer organization.

32 g. A financial statement setting forth the financial
33 condition of the professional employer organization, as of a
34 date not earlier than three hundred sixty-five days prior to
35 the date submitted to the department, prepared in accordance

1 with generally accepted accounting principles, and audited by
2 an independent certified public accountant licensed to
3 practice in the jurisdiction in which such accountant is
4 located. A professional employer organization group may
5 submit combined or consolidated audited financial statements
6 to meet the requirements of this section. A professional
7 employer organization that has not had sufficient operating
8 history for an audited financial statement based on at least
9 twelve months of operating history must meet the financial
10 capability requirements of section 95.6 and present pro forma
11 financial statements reviewed by a certified public
12 accountant.

13 3. INITIAL LICENSING. Each professional employer
14 organization operating within this state as of July 1, 2005,
15 shall complete its initial licensing not later than one
16 hundred eighty days after July 1, 2005. Such initial license
17 shall be valid until the end of the professional employer
18 organization's first fiscal year that is more than one year
19 after July 1, 2005. Each professional employer organization
20 not operating within this state as of July 1, 2005, shall
21 complete its initial licensing prior to commencement of
22 operations within this state.

23 4. RENEWAL. Within one hundred eighty days after the end
24 of a licensee's fiscal year, such licensee shall renew its
25 license by notifying the department of any changes in the
26 information provided in such licensee's most recent license or
27 renewal.

28 5. GROUP LICENSING. Any two or more professional employer
29 organizations held under common control of any other person or
30 persons acting in concert may be licensed as a professional
31 employer organization group. A professional employer
32 organization group may satisfy any reporting and financial
33 requirements of this chapter on a consolidated basis.

34 6. LIMITED LICENSE. A professional employer organization
35 is eligible for a limited license under this chapter if all of

1 the following apply:

2 a. The professional employer organization submits a
3 properly executed request for limited licensure on a form
4 provided by the department.

5 b. The professional employer organization is domiciled
6 outside this state and is licensed or registered as a
7 professional employer organization in another state that has
8 substantially the same or greater requirements as this
9 chapter.

10 c. The professional employer organization does not
11 maintain an office in this state or directly solicit clients
12 located or domiciled within this state.

13 d. The professional employer organization does not have
14 more than fifty covered employees employed or domiciled in
15 this state on any given day.

16 A limited license is valid for one year and may be renewed.
17 A professional employer organization seeking limited licensure
18 under this subsection shall provide the department with
19 information and documentation necessary to show that the
20 professional employer organization qualifies for a limited
21 license. Section 95.6, subsection 1, shall not apply to
22 applicants for limited licensure.

23 7. ALTERNATIVE LICENSURE. The department may by rule and
24 regulation provide for the acceptance of an affidavit or
25 certification of a bonded, independent, and qualified
26 assurance organization that has been approved by the director
27 certifying qualifications of a professional employer
28 organization in lieu of the requirements of this section and
29 section 95.6.

30 8. LIST. The department shall maintain a list of
31 professional employer organizations licensed under this
32 chapter.

33 9. FORMS. The department may prescribe forms necessary to
34 promote the efficient administration of this section.

35 10. RECORD CONFIDENTIALITY.

1 a. Except as provided in paragraph "b", all records,
2 reports, and other information obtained from a professional
3 employer organization under this chapter, except to the extent
4 necessary for the proper administration of this chapter by the
5 department, shall be confidential and shall not be published
6 or open to public inspection other than to public employees in
7 the performance of their public duties.

8 b. Any agreement between a professional employer
9 organization and a public employer, and any records, reports,
10 or other information concerning a covered employee whose
11 coemployer is a public employer shall be open to public
12 inspection pursuant to chapter 22 to the same extent such
13 agreements, records, reports, and information are open to
14 public inspection for a government body under chapter 22.

15 Sec. 5. NEW SECTION. 95.5 FEES.

16 1. INITIAL LICENSURE. Upon filing an initial license
17 application under this chapter, a professional employer
18 organization shall pay an initial license fee not to exceed
19 five hundred dollars.

20 2. RENEWAL. Upon each annual renewal of a license under
21 this chapter, a professional employer organization shall pay a
22 renewal fee not to exceed five hundred dollars.

23 3. LIMITED LICENSURE. Each professional employer
24 organization seeking limited licensure under the terms of this
25 chapter shall pay a fee in an amount not to exceed five
26 hundred dollars upon initial application for limited licensure
27 and upon each annual renewal of such limited license.

28 4. ALTERNATIVE LICENSURE. A professional employer
29 organization seeking alternative licensure shall pay an
30 initial and annual fee not to exceed five hundred dollars.

31 5. OTHER FEES. The department shall adopt by rule any
32 other fee to be charged under this chapter. Such fees shall
33 not exceed those reasonably necessary for the administration
34 of the duties of the department under this chapter.

35 Sec. 6. NEW SECTION. 95.6 FINANCIAL CAPABILITY.

1 Each professional employer organization shall maintain
2 either of the following:

3 1. A minimum net worth of one hundred thousand dollars as
4 reflected in the financial statements submitted to the
5 department with the initial license application and each
6 annual renewal.

7 2. A bond, securities, or bank letter of credit with a
8 minimum value of one hundred thousand dollars held by a
9 depository designated by the department, securing payment by
10 the professional employer organization of all taxes, wages,
11 benefits, or other entitlement due to or with respect to
12 covered employees, if the professional employer organization
13 does not make such payments when due. Any bond or securities
14 deposited under this subsection shall not be included for the
15 purpose of calculation of the minimum net worth required by
16 this section.

17 Sec. 7. NEW SECTION. 95.7 GENERAL REQUIREMENTS AND
18 PROVISIONS.

19 1. CONTRACTUAL RELATIONSHIP. Except as specifically
20 provided in this chapter, the coemployment relationship
21 between the client and the professional employer organization,
22 and between each coemployer and each covered employee, shall
23 be governed by the professional employer agreement.

24 a. Nothing contained in any professional employer
25 agreement or this chapter shall be deemed to do any of the
26 following:

27 (1) Diminish, abolish, or remove rights of covered
28 employees as to clients or obligations of such client as to a
29 covered employee existing prior to the effective date of a
30 professional employer agreement.

31 (2) Terminate an employment relationship existing prior to
32 the effective date of a professional employer agreement.

33 (3) Create any new or additional enforceable right of a
34 covered employee against a professional employer organization
35 not specifically allocated to such professional employer

1 organization in the professional employer agreement or this
2 chapter.

3 b. Each professional employer agreement shall include all
4 of the following:

5 (1) The professional employer organization shall reserve a
6 right of direction and control over the covered employees,
7 provided that the client may retain the right to exercise such
8 direction and control over covered employees as is necessary
9 to conduct the client's business, to discharge any fiduciary
10 responsibility which it may have, or to comply with any
11 applicable licensure requirements.

12 (2) The professional employer organization shall have the
13 responsibility to pay agreed-upon wages to covered employees;
14 to withhold, collect, report, and remit payroll-related and
15 unemployment taxes; and, to the extent the professional
16 employer organization has assumed responsibility in the
17 professional employer agreement, to make payments for employee
18 benefits for covered employees. As used in this subparagraph,
19 "wages" does not include any obligation between a client and a
20 covered employee for payments beyond or in addition to the
21 covered employee's salary, draw, or regular rate of pay, such
22 as bonuses, commissions, severance pay, deferred compensation,
23 profit sharing or vacation, sick or other paid time-off pay,
24 unless the professional employer organization has expressly
25 agreed to assume liability for such payments in the
26 professional employer agreement.

27 (3) The professional employer organization and the client
28 shall both have a right to hire, terminate, and discipline the
29 covered employees. Such right shall not limit the rights and
30 remedies of covered employees under a collective bargaining
31 agreement.

32 (4) The responsibility to obtain workers' compensation
33 coverage for covered employees, from a carrier licensed to do
34 business in this state and otherwise in compliance with all
35 applicable requirements, shall be specifically allocated to

1 either the client or the professional employer organization.
2 If such responsibility is allocated to the professional
3 employer organization under the agreement, the agreement shall
4 require that the professional employer organization maintain
5 and provide to the client at the termination of the agreement,
6 if requested by the client, records regarding the loss
7 experience related to workers' compensation insurance provided
8 to covered employees pursuant to such agreement.

9 2. ALLOCATION OF RIGHTS, DUTIES, AND OBLIGATIONS. Except
10 as specifically provided in this chapter or in the
11 professional employer agreement, in each coemployment
12 relationship, all of the following shall apply:

13 a. The client shall be entitled to exercise all rights and
14 shall be obligated to perform all duties and responsibilities
15 otherwise applicable to an employer in an employment
16 relationship.

17 b. The professional employer organization shall be
18 entitled to exercise only those rights, and obligated to
19 perform only those duties and responsibilities, specifically
20 required by this chapter or set forth in the professional
21 employer agreement. The rights, duties, and obligations of
22 the professional employer organization as coemployer with
23 respect to any covered employee shall be limited to those
24 arising pursuant to the professional employer agreement and
25 this chapter during the term of coemployment by the
26 professional employer organization of such covered employee.

27 c. Unless otherwise expressly agreed by the professional
28 employer organization and the client in a professional
29 employer agreement, the client retains the exclusive right to
30 direct and control the covered employees as is necessary to
31 conduct the client's business, to discharge any of the
32 client's fiduciary responsibilities, or to comply with any
33 licensure requirements applicable to the client or to the
34 covered employees.

35 3. NOTICE TO COVERED EMPLOYEES. With respect to each

1 professional employer agreement entered into by a professional
2 employer organization, such professional employer organization
3 shall provide written notice to each covered employee affected
4 by such agreement of the general nature of the coemployment
5 relationship between and among the professional employer
6 organization, the client, and such covered employee. Such
7 notice shall include notice to the employees of the client's
8 and the professional employer organization's obligations under
9 this section including but not limited to the party
10 responsible for the provision of employee benefits, if any.

11 4. LIMITATIONS ON LIABILITY. Except to the extent
12 otherwise expressly provided by a professional employer
13 agreement, all of the following shall apply:

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

17 b. 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
20 client and solely responsible for the acts, errors, or
21 omissions of the covered employees with regard to such
22 activities.

23 c. A client shall not be liable for the acts, errors, or
24 omissions of a professional employer organization, or of any
25 covered employee of the client and a professional employer
26 organization when such covered employee is acting under the
27 express direction and control of the professional employer
28 organization.

29 d. Nothing in this subsection shall serve to limit any
30 contractual liability or obligation specifically provided in a
31 professional employer agreement, nor shall this subsection in
32 any way limit the liabilities and obligations of any
33 professional employer organization or client as defined
34 elsewhere in this chapter.

35 e. A covered employee is not, solely as the result of

1 being a covered employee of a professional employer
2 organization, an employee of the professional employer
3 organization for purposes of general liability insurance,
4 fidelity bonds, surety bonds, employer's liability which is
5 not covered by workers' compensation, or liquor liability
6 insurance carried by the professional employer organization
7 unless the covered employee is included by specific reference
8 in the professional employer agreement and applicable
9 prearranged employment contract, insurance contract, or bond.

10 5. JOINT AND SEVERAL LIABILITY. Notwithstanding the terms
11 of the professional employer agreement or any other provision
12 of this chapter, the professional employer organization and
13 the client are jointly and severally liable for any claims by
14 a covered employee for unpaid or improperly paid wages,
15 benefits, or other compensation for services, and for any
16 claims of unlawful or improper discharge, discipline, or
17 failure to hire.

18 6. SALE OF INSURANCE. A professional employer
19 organization or its representative shall not sell, solicit, or
20 negotiate insurance unless licensed as an insurance producer
21 pursuant to chapter 522B.

22 7. TAXATION. Covered employees whose services are subject
23 to sales tax shall be deemed the employees of the client for
24 purposes of collecting and levying sales tax on the services
25 performed by the covered employee. Nothing contained in this
26 chapter shall relieve a client of any sales tax liability with
27 respect to its goods or services. Any tax upon professional
28 employer services shall be limited to the administrative fee.

29 Sec. 8. NEW SECTION. 95.8 BENEFIT PLANS.

30 1. A client and a professional employer organization shall
31 each be deemed an employer for purposes of sponsoring
32 retirement and welfare benefit plans for its covered
33 employees.

34 2. A fully insured welfare benefit plan offered to the
35 covered employees of a single professional employer

1 organization shall be considered a single employer welfare
2 benefit plan and shall not be considered a multiple employer
3 welfare arrangement as defined in section 3 of the federal
4 Employee Retirement Income Security Act of 1974, 29 U.S.C. §
5 1002, paragraph 40, and referred to in section 507A.4.

6 3. If a professional employer organization offers to its
7 covered employees any health benefit plan which is not fully
8 insured by an authorized insurer, the plan shall do all of the
9 following:

10 a. Utilize a third-party administrator licensed to do
11 business in this state.

12 b. Hold all plan assets, including participant
13 contributions, in a trust account.

14 c. Provide sound reserves for such plan as determined
15 using generally accepted actuarial standards.

16 Sec. 9. NEW SECTION. 95.9 WORKERS' COMPENSATION.

17 1. The professional employer organization and the client
18 are jointly and severally liable for providing a workers'
19 compensation insurance policy and benefits for covered
20 employees from a carrier licensed to do business in this state
21 and for compliance with all statutory and regulatory
22 requirements concerning workers' compensation. Workers'
23 compensation insurance coverage or benefits that are provided
24 by either coemployer satisfy the liability of both
25 coemployers. The allocation of responsibility between the
26 coemployers in the professional employer agreement is an
27 agreement between the coemployers and does not limit the
28 rights of a covered employee, government agency, or third
29 party.

30 2. Both the client and the professional employer
31 organization shall be considered the employer for the purpose
32 of coverage under the workers' compensation laws provided in
33 chapters 85, 85A, and 85B, and both the professional employer
34 organization and its client shall be entitled to protection of
35 the exclusive remedy provision in section 85.20, irrespective

1 of which coemployer obtains such workers' compensation
2 coverage.

3 3. A workers' compensation insurance policy provided to a
4 professional employer organization shall comply with the
5 requirements provided in chapter 87.

6 4. Nothing in this section shall limit the rights and
7 remedies of covered employees under a collective bargaining
8 agreement.

9 Sec. 10. NEW SECTION. 95.10 UNEMPLOYMENT COMPENSATION
10 INSURANCE.

11 For purposes of the Iowa employment security law in chapter
12 96, covered employees of a licensed professional employer
13 organization are considered the employees of the client. The
14 professional employer organization shall be responsible for
15 the payment of contributions, penalties, and interest on wages
16 paid by the professional employer organization to its covered
17 employees during the term of the applicable professional
18 employer agreement.

19 Sec. 11. NEW SECTION. 95.11 VIOLATIONS -- PENALTIES.

20 1. a. A person shall not offer or provide professional
21 employer services or use the title "professional employer
22 organization", "PEO", "staff leasing company", "employee
23 leasing company", "registered staff leasing company",
24 "administrative employer", or other title representing the
25 provision of professional employer services unless registered
26 pursuant to this chapter.

27 b. A person shall not knowingly provide false or
28 fraudulent information to the department in conjunction with a
29 registration, renewal, or any other requirement of this
30 chapter.

31 2. A person who willfully violates subsection 1 is guilty
32 of an aggravated misdemeanor.

33 3. An agent, officer, director, manager, or other person
34 who exercises control over the actions of a client who falsely
35 or fraudulently procures or attempts to procure services or

1 benefits from a professional employer organization registered
2 under this chapter without having adequate funds to compensate
3 the professional is guilty of a fraudulent practice and is
4 subject to the penalties provided for commission of a
5 fraudulent practice under chapter 714.

6 Sec. 12. NEW SECTION. 95.12 REGISTRATION DENIAL,
7 RESTRICTION, OR REVOCATION -- CIVIL PENALTY.

8 The department may deny an application for a registration
9 or restrict or revoke a registration issued pursuant to this
10 chapter, if the department finds any of the following after
11 notice and opportunity for a hearing:

12 1. That the applicant or professional employer
13 organization violated section 95.11, subsection 1.

14 2. That the applicant or professional employer
15 organization knowingly made a material misrepresentation to
16 the department or any other governmental agency.

17 3. That the applicant or professional employer
18 organization willfully violated any provision of this chapter
19 or rule adopted pursuant to this chapter, or an order issued
20 by the department.

21 Sec. 13. NEW SECTION. 95.13 SEVERABILITY.

22 The provisions of this chapter are severable. If any
23 provision of this chapter, or application thereof to any
24 person or circumstance, is held invalid, such invalidity shall
25 not affect other provisions or applications of this chapter
26 which can be given effect without the invalid provision or
27 application.

28 Sec. 14. NEW SECTION. 95.14 RULES -- INJUNCTIONS.

29 1. The department shall adopt rules necessary to
30 administer this chapter.

31 2. The director may seek injunctive relief to enforce this
32 chapter in the manner provided in section 96.14, subsection
33 16.

34 EXPLANATION

35 This bill creates the professional employer organization

1 recognition and licensing Act in new Code chapter 95. A
2 professional employer organization is required to be licensed
3 annually with the department of workforce development as
4 provided in the bill. The bill provides requirements for the
5 application, renewal, confidentiality, applicable fees, and
6 proof of financial capability regarding the licensing of
7 professional employer organizations.

8 The bill provides for the rights, duties, and obligations
9 of professional employer organizations doing business in this
10 state. The bill provides that the relationship between a
11 professional employer organization and its client must be
12 governed by a professional employer agreement which must
13 contain information regarding the rights of the professional
14 employer organization and the client, allocate certain
15 obligations of the professional employer organization and the
16 client, and may not affect rights under collective bargaining
17 agreements, licensing requirements, tax credits, or other
18 government incentives. The professional employer organization
19 must provide notice to each of its employees covered by a
20 professional employer agreement of the obligations of the
21 professional employer organization and the client under the
22 agreement. The bill allocates liability and limits of
23 liability for certain actions and responsibilities of the
24 client and the professional employer organization.

25 The bill specifies when either the client or professional
26 employer organization or both are considered the employer
27 under laws governing taxation, retirement and health benefit
28 plans, workers' compensation, and unemployment insurance. The
29 bill provides that a person who offers or provides
30 professional employment services without a license, uses
31 certain titles without a license, or knowingly provides false
32 or fraudulent information to the department is guilty of an
33 aggravated misdemeanor. An aggravated misdemeanor is
34 punishable by confinement for no more than two years and a
35 fine of at least \$500 but not more than \$5,000. A person who

1 exercises control over a client who falsely or fraudulently
2 procures services from a professional employer organization
3 without adequate funds to pay the professional employer
4 organization commits a fraudulent practice under Code chapter
5 714. The bill provides that the department may deny,
6 restrict, or revoke a license under certain circumstances.
7 The bill provides definitions of terms used in the chapter and
8 that the provisions of the chapter are to be considered
9 severable if any portion is held invalid.

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HOUSE FILE 791

H-1094

- 1 Amend House File 791 as follows:
2 1. Page 4, line 10, by striking the word
3 "registration" and inserting the following:
4 "licensure".
5 2. Page 17, line 23, by striking the word
6 "registered" and inserting the following: "licensed".
7 3. Page 17, line 25, by striking the word
8 "registered" and inserting the following: "licensed".
9 4. Page 17, line 29, by striking the word
10 "registration" and inserting the following: "license".
11 5. Page 18, line 1, by striking the word
12 "registered" and inserting the following: "licensed".
13 6. Page 18, line 6, by striking the word
14 "REGISTRATION" and inserting the following: "LICENSE".
15 7. Page 18, line 7, by striking the words "--
16 CIVIL PENALTY".
17 8. Page 18, line 8, by striking the word
18 "registration" and inserting the following: "license".
19 9. Page 18, line 9, by striking the word
20 "registration" and inserting the following: "license".
21 10. Title page, line 2, by inserting after the
22 word "for" the following: "fees and".

By GREINER of Washington

H-1094 FILED MARCH 16, 2005

Chair: Greiner
Boal
Lensing

F 0791

HSB 21
STATE GOVERNMENT

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON ELGIN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the recognition and registration of
2 professional employer organizations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 95.1 PURPOSE AND INTENT.

2 The general assembly finds that professional employer
3 organizations provide a valuable service to commerce and the
4 citizens of this state by increasing the opportunities of
5 employers to develop cost-effective methods of satisfying
6 their personnel requirements and providing employees with
7 access to certain employment benefits which might otherwise
8 not be available to them.

9 The general assembly further finds that professional
10 employer organizations operating in this state should be
11 properly recognized and regulated by the department of
12 workforce development, as provided in this chapter, and that
13 any allocation of the employer duties and responsibilities
14 pursuant to this chapter will preserve all rights to which
15 covered employees would be entitled under a traditional
16 employment relationship.

17 Sec. 2. NEW SECTION. 95.2 DEFINITIONS.

18 As used in this chapter, unless the context otherwise
19 requires:

20 1. "Administrative fee" means the fee charged to a client
21 by a professional employer organization for professional
22 employer services. However, the administrative fee shall not
23 be deemed to include any amount of a fee by the professional
24 employer organization that is for wages and salaries,
25 benefits, workers' compensation, payroll taxes, withholding,
26 or other assessments paid by the professional employer
27 organization to or on behalf of covered employees under the
28 professional employer agreement.

29 2. "Client" means any person who enters into a
30 professional employer agreement with a professional employer
31 organization.

32 3. "Coemployer" means either a professional employer
33 organization or a client.

34 4. "Coemployment relationship" means all of the following:

35 a. As between coemployers, a relationship whereby the

1 rights, duties, and obligations of an employer which arise out
2 of an employment relationship have been allocated between
3 coemployers pursuant to a professional employer agreement and
4 this chapter, and which is intended to be an ongoing
5 relationship, rather than a temporary or project-specific
6 relationship.

7 b. As between each professional employer organization and
8 a covered employee as to whom a professional employer
9 agreement applies, an employment relationship whereby such
10 professional employer organization is entitled to enforce
11 those rights, and obligated to perform those duties and
12 obligations, allocated to such professional employer
13 organization by the professional employer agreement and this
14 chapter.

15 c. As between each client and a covered employee to whom a
16 professional employer agreement applies, an employment
17 relationship whereby such client is entitled to enforce those
18 rights, and obligated to provide and perform those employer
19 obligations allocated to such client by the professional
20 employer agreement and this chapter and whereby such client is
21 responsible for any employer right or obligation not otherwise
22 allocated by the professional employer agreement or this
23 chapter.

24 d. As to rights enforceable by an employee under state
25 law, covered employees shall be entitled to enforce against
26 the professional employer organization all of the following
27 rights:

28 (1) Those allocated to such professional employer
29 organization by the professional employer agreement and this
30 chapter.

31 (2) Those shared by the professional employer organization
32 and the client under the professional employer agreement and
33 this chapter.

34 (3) All other rights, duties, and obligations enforceable
35 by an employee against the client pursuant to state law.

1 5. "Covered employee" means an individual having a
2 coemployment relationship with a professional employer
3 organization and a client who meets both of the following
4 criteria:

5 a. The individual is a party to a coemployment
6 relationship with a professional employer organization and a
7 client.

8 b. The individual's coemployment relationship is pursuant
9 to a professional employer agreement subject to this chapter.

10 Individuals who are officers, directors, shareholders,
11 partners, and managers of the client will be covered employees
12 to the extent the professional employer organization and the
13 client have expressly agreed in the professional employer
14 agreement that such individuals would be covered employees and
15 provided such individuals meet the criteria of this subsection
16 and act as operational managers or perform services for the
17 client.

18 6. "Department" means the department of workforce
19 development.

20 7. "Director" means the director of the department of
21 workforce development.

22 8. "Person" means a person as defined in section 4.1.

23 9. "Professional employer agreement" means a written
24 contract by and between a client and a professional employer
25 organization that provides all of the following:

26 a. For the coemployment of covered employees.

27 b. For the allocation and sharing between the client and
28 the professional employer organization employer
29 responsibilities, including hiring, firing, and disciplining,
30 with respect to the covered employees.

31 c. That the professional employer organization and the
32 client assume the responsibilities required by this chapter.

33 10. "Professional employer organization" means any person
34 engaged in the business of providing professional employer
35 services.

1 a. A person engaged in the business of providing
2 professional employer services shall be subject to
3 registration under this chapter regardless of its use of the
4 term "professional employer organization", "PEO", "staff
5 leasing company", "registered staff leasing company",
6 "employee leasing company", or any other similar name.

7 b. None of the following shall be deemed to be a
8 professional employer organization or professional employer
9 services for purposes of this chapter:

10 (1) Arrangements by which a person, whose principal
11 business activity is not entering into professional employer
12 arrangements and who does not hold itself out as a
13 professional employer organization, shares employees with a
14 commonly owned company within the meaning of section 414(b)
15 and (c) of the Internal Revenue Code of 1986, as amended.

16 (2) Arrangements by which a person assumes responsibility
17 for the product produced or service performed by such person
18 or the person's agents and retains and exercises primary
19 direction and control over the work performed by the
20 individuals whose services are supplied under such
21 arrangements.

22 (3) Providing temporary help services.

23 11. "Professional employer services" means the service of
24 entering into coemployment relationships under this chapter in
25 which all or a majority of the employees providing services to
26 a client or to a division or work unit of a client are covered
27 employees.

28 12. "Registrant" means a professional employer
29 organization registered under this chapter.

30 13. "Temporary help services" means services pursuant to
31 which a person does all of the following:

32 a. Recruits and hires employees.

33 b. Finds other organizations that need the services of
34 those employees.

35 c. Assigns those employees to perform work or services for

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

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

8 Sec. 3. NEW SECTION. 95.3 RIGHTS, DUTIES, AND
9 OBLIGATIONS.

10 1. COLLECTIVE BARGAINING AGREEMENTS. Nothing contained in
11 this chapter or in any professional employer agreement shall
12 affect, modify, or amend any collective bargaining agreement
13 or the rights or obligations of any client, professional
14 employer organization, or covered employee under the federal
15 National Labor Relations Act, the federal Railway Labor Act,
16 or the public employment relations Act in chapter 20.

17 2. LICENSING.

18 a. Nothing contained in this chapter or any professional
19 employer agreement shall affect, modify, or amend any state,
20 local, or federal licensing, registration, or certification
21 requirement applicable to any client or covered employee. A
22 covered employee who must be licensed, registered, or
23 certified according to law or regulation is deemed solely an
24 employee of the client for purposes of any such license,
25 registration, or certification requirement.

26 b. A professional employer organization shall not be
27 deemed to engage in any occupation, trade, profession, or
28 other activity that is subject to licensing, registration, or
29 certification requirements, or is otherwise regulated by a
30 governmental entity solely by entering into and maintaining a
31 coemployment relationship with a covered employee who is
32 subject to such requirements or regulation.

33 c. Unless otherwise expressly agreed to by the client in
34 the professional employer agreement, a client shall have the
35 sole right to direct and control the professional or licensed

1 activities of covered employees and of the client's business.

2 3. TAX CREDITS AND OTHER INCENTIVES. For purposes of
3 determination of tax credits and other economic incentives
4 provided by this state and based on employment, covered
5 employees shall be deemed employees solely of the client. A
6 client shall be entitled to the benefit of any tax credit,
7 economic incentive, or other benefit arising as the result of
8 the employment of covered employees of such client. If the
9 grant or amount of any such incentives is based on the number
10 of employees, then each client shall be treated as employing
11 only those covered employees actually working in the client's
12 business operations and covered employees working for other
13 clients of the professional employer organization shall not be
14 counted. Each professional employer organization shall
15 provide, upon request by a client or an agency or department
16 of this state, employment information reasonably required by
17 any agency or department of this state responsible for
18 administration of any such tax credit or economic incentive
19 and necessary to support any request, claim, application, or
20 other action by a client seeking any such tax credit or
21 economic incentive.

22 4. DISADVANTAGED BUSINESS. With respect to a bid,
23 contract, purchase order, or agreement entered into with the
24 state or a political subdivision of the state, a client
25 company's status or certification as a small, minority-owned,
26 disadvantaged, or woman-owned business enterprise or as a
27 historically underutilized business is not affected because
28 the client company has entered into an agreement with a
29 registrant or uses the services of a registrant.

30 Sec. 4. NEW SECTION. 95.4 REGISTRATION REQUIREMENTS.

31 1. REGISTRATION REQUIRED. Except as otherwise provided in
32 this chapter, a person shall not provide, advertise, or
33 otherwise hold itself out as providing professional employer
34 services in this state, unless such person is registered under
35 this chapter.

1 2. REGISTRATION INFORMATION. Each applicant for
2 registration under this chapter shall provide the department
3 with all of the following information:

4 a. The name or names under which the professional employer
5 organization conducts business.

6 b. The address of the principal place of business of the
7 professional employer organization and the address of each
8 office it maintains in this state.

9 c. The professional employer organization's taxpayer or
10 employer identification number.

11 d. A list by jurisdiction of each name under which the
12 professional employer organization has operated in the
13 preceding five years, including any alternative names, names
14 of predecessors, and if known, successor business entities.

15 e. A statement of ownership, which shall include the name
16 and evidence of the business experience of any person that,
17 individually or acting in concert with one or more other
18 persons, owns or controls, directly or indirectly, twenty-five
19 percent or more of the equity interests of the professional
20 employer organization.

21 f. A statement of management, which shall include the name
22 and evidence of the business experience of any person who
23 serves as president, chief executive officer, or otherwise has
24 the authority to act as senior executive officer of the
25 professional employer organization.

26 g. A financial statement setting forth the financial
27 condition of the professional employer organization, as of a
28 date not earlier than three hundred sixty-five days prior to
29 the date submitted to the department, prepared in accordance
30 with generally accepted accounting principles, and audited or
31 reviewed by an independent certified public accountant
32 licensed to practice in the jurisdiction in which such
33 accountant is located. A professional employer organization
34 group may submit combined or consolidated audited or reviewed
35 financial statements to meet the requirements of this section.

1 3. INITIAL REGISTRATION. Each professional employer
2 organization operating within this state as of July 1, 2005,
3 shall complete its initial registration not later than one
4 hundred eighty days after July 1, 2005. Such initial
5 registration shall be valid until the end of the professional
6 employer organization's first fiscal year that is more than
7 one year after July 1, 2005. Each professional employer
8 organization not operating within this state as of July 1,
9 2005, shall complete its initial registration prior to
10 commencement of operations within this state.

11 4. RENEWAL. Within one hundred eighty days after the end
12 of a registrant's fiscal year, such registrant shall renew its
13 registration by notifying the department of any changes in the
14 information provided in such registrant's most recent
15 registration or renewal.

16 5. GROUP REGISTRATION. Any two or more professional
17 employer organizations held under common control of any other
18 person or persons acting in concert may be registered as a
19 professional employer organization group. A professional
20 employer organization group may satisfy any reporting and
21 financial requirements of this chapter on a consolidated
22 basis.

23 6. LIMITED REGISTRATION. A professional employer
24 organization is eligible for a limited registration under this
25 chapter if all of the following apply:

26 a. The professional employer organization submits a
27 properly executed request for limited registration on a form
28 provided by the department.

29 b. The professional employer organization is domiciled
30 outside this state and is licensed or registered as a
31 professional employer organization in another state that has
32 substantially the same or greater requirements as this
33 chapter.

34 c. The professional employer organization does not
35 maintain an office in this state or directly solicit clients

1 located or domiciled within this state.

2 d. The professional employer organization does not have
3 more than fifty covered employees employed or domiciled in
4 this state on any given day.

5 A limited registration is valid for one year and may be
6 renewed. A professional employer organization seeking limited
7 registration under this subsection shall provide the
8 department with information and documentation necessary to
9 show that the professional employer organization qualifies for
10 a limited registration. Section 95.6, subsection 1, shall not
11 apply to applicants for limited registration.

12 7. ALTERNATIVE REGISTRATION. The department may by rule
13 and regulation provide for the acceptance of an affidavit or
14 certification of a bonded, independent, and qualified
15 assurance organization that has been approved by the director
16 certifying qualifications of a professional employer
17 organization in lieu of the requirements of this section and
18 section 95.6.

19 8. LIST. The department shall maintain a list of
20 professional employer organizations registered under this
21 chapter.

22 9. FORMS. The department may prescribe forms necessary to
23 promote the efficient administration of this section.

24 10. RECORD CONFIDENTIALITY. All records, reports, and
25 other information obtained from a professional employer
26 organization under this chapter, except to the extent
27 necessary for the proper administration of this chapter by the
28 department, shall be confidential and shall not be published
29 or open to public inspection other than to public employees in
30 the performance of their public duties.

31 Sec. 5. NEW SECTION. 95.5 FEES.

32 1. INITIAL REGISTRATION. Upon filing an initial
33 registration application under this chapter, a professional
34 employer organization shall pay an initial registration fee
35 not to exceed five hundred dollars.

1 2. RENEWAL. Upon each annual renewal of a registration
2 under this chapter, a professional employer organization shall
3 pay a renewal fee not to exceed two hundred fifty dollars.

4 3. LIMITED REGISTRATION. Each professional employer
5 organization seeking limited registration under the terms of
6 this chapter shall pay a fee in an amount not to exceed two
7 hundred fifty dollars upon initial application for limited
8 registration and upon each annual renewal of such limited
9 registration.

10 4. ALTERNATIVE REGISTRATION. A professional employer
11 organization seeking alternative registration shall pay an
12 initial and annual fee not to exceed two hundred fifty
13 dollars.

14 5. OTHER FEES. The department shall adopt by rule any
15 other fee to be charged under this chapter. Such fees shall
16 not exceed those reasonably necessary for the administration
17 of the duties of the department under this chapter.

18 Sec. 6. NEW SECTION. 95.6 FINANCIAL CAPABILITY.

19 Each professional employer organization shall maintain
20 either of the following:

21 1. A minimum net worth of fifty thousand dollars as
22 reflected in the financial statements submitted to the
23 department with the initial registration application and each
24 annual renewal.

25 2. A bond, securities, or bank letter of credit with a
26 minimum value of fifty thousand dollars held by a depository
27 designated by the department, securing payment by the
28 professional employer organization of all taxes, wages,
29 benefits, or other entitlement due to or with respect to
30 covered employees, if the professional employer organization
31 does not make such payments when due. Any bond or securities
32 deposited under this subsection shall not be included for the
33 purpose of calculation of the minimum net worth required by
34 this section.

35 Sec. 7. NEW SECTION. 95.7 GENERAL REQUIREMENTS AND

1 PROVISIONS.

2 1. CONTRACTUAL RELATIONSHIP. Except as specifically
3 provided in this chapter, the coemployment relationship
4 between the client and the professional employer organization,
5 and between each coemployer and each covered employee, shall
6 be governed by the professional employer agreement.

7 a. Nothing contained in any professional employer
8 agreement or this chapter shall be deemed to do any of the
9 following:

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

14 (2) Terminate an employment relationship existing prior to
15 the effective date of a professional employer agreement.

16 (3) Create any new or additional enforceable right of a
17 covered employee against a professional employer organization
18 not specifically allocated to such professional employer
19 organization in the professional employer agreement or this
20 chapter.

21 b. Each professional employer agreement shall include all
22 of the following:

23 (1) The professional employer organization shall reserve a
24 right of direction and control over the covered employees,
25 provided that the client may retain the right to exercise such
26 direction and control over covered employees as is necessary
27 to conduct the client's business, to discharge any fiduciary
28 responsibility which it may have, or to comply with any
29 applicable licensure requirements.

30 (2) The professional employer organization shall have the
31 responsibility to pay agreed-upon wages to covered employees;
32 to withhold, collect, report, and remit payroll-related and
33 unemployment taxes; and, to the extent the professional
34 employer organization has assumed responsibility in the
35 professional employer agreement, to make payments for employee

1 benefits for covered employees. As used in this subparagraph,
2 "wages" does not include any obligation between a client and a
3 covered employee for payments beyond or in addition to the
4 covered employee's salary, draw, or regular rate of pay, such
5 as bonuses, commissions, severance pay, deferred compensation,
6 profit sharing or vacation, sick or other paid time-off pay,
7 unless the professional employer organization has expressly
8 agreed to assume liability for such payments in the
9 professional employer agreement.

10 (3) The professional employer organization and the client
11 shall both have a right to hire, terminate, and discipline the
12 covered employees.

13 (4) The responsibility to obtain workers' compensation
14 coverage for covered employees, from a carrier licensed to do
15 business in this state and otherwise in compliance with all
16 applicable requirements, shall be specifically allocated to
17 either the client or the professional employer organization.

18 2. ALLOCATION OF RIGHTS, DUTIES, AND OBLIGATIONS. Except
19 as specifically provided in this chapter or in the
20 professional employer agreement, in each coemployment
21 relationship, all of the following shall apply:

22 a. The client shall be entitled to exercise all rights and
23 shall be obligated to perform all duties and responsibilities
24 otherwise applicable to an employer in an employment
25 relationship.

26 b. The professional employer organization shall be
27 entitled to exercise only those rights, and obligated to
28 perform only those duties and responsibilities, specifically
29 required by this chapter or set forth in the professional
30 employer agreement. The rights, duties, and obligations of
31 the professional employer organization as coemployer with
32 respect to any covered employee shall be limited to those
33 arising pursuant to the professional employer agreement and
34 this chapter during the term of coemployment by the
35 professional employer organization of such covered employee.

1 c. Unless otherwise expressly agreed by the professional
2 employer organization and the client in a professional
3 employer agreement, the client retains the exclusive right to
4 direct and control the covered employees as is necessary to
5 conduct the client's business, to discharge any of the
6 client's fiduciary responsibilities, or to comply with any
7 licensure requirements applicable to the client or to the
8 covered employees.

9 3. NOTICE TO COVERED EMPLOYEES. With respect to each
10 professional employer agreement entered into by a professional
11 employer organization, such professional employer organization
12 shall provide written notice to each covered employee affected
13 by such agreement of the general nature of the coemployment
14 relationship between and among the professional employer
15 organization, the client, and such covered employee. Such
16 notice shall include notice to the employees of the client's
17 and the professional employer organization's obligations under
18 this section.

19 4. LIMITATIONS ON LIABILITY. Except to the extent
20 otherwise expressly provided by a professional employer
21 agreement, all of the following shall apply:

22 a. A client shall be solely responsible for the quality,
23 adequacy, or safety of the goods or services produced or sold
24 in the client's business.

25 b. A client shall be solely responsible for directing,
26 supervising, training, and controlling the work of the covered
27 employees with respect to the business activities of the
28 client and solely responsible for the acts, errors, or
29 omissions of the covered employees with regard to such
30 activities.

31 c. A client shall not be liable for the acts, errors, or
32 omissions of a professional employer organization, or of any
33 covered employee of the client and a professional employer
34 organization when such covered employee is acting under the
35 express direction and control of the professional employer

1 organization.

2 d. Nothing in this subsection shall serve to limit any
3 contractual liability or obligation specifically provided in a
4 professional employer agreement, nor shall this subsection in
5 any way limit the liabilities and obligations of any
6 professional employer organization or client as defined
7 elsewhere in this chapter.

8 e. A covered employee is not, solely as the result of
9 being a covered employee of a professional employer
10 organization, an employee of the professional employer
11 organization for purposes of general liability insurance,
12 fidelity bonds, surety bonds, employer's liability which is
13 not covered by workers' compensation, or liquor liability
14 insurance carried by the professional employer organization
15 unless the covered employee is included by specific reference
16 in the professional employer agreement and applicable
17 prearranged employment contract, insurance contract, or bond.

18 5. SERVICES NOT INSURANCE. A registrant under this
19 chapter is not engaged in the sale of insurance by offering,
20 marketing, selling, administering, or providing professional
21 employer organization services or employee benefit plans for
22 covered employees.

23 6. TAXATION. Covered employees whose services are subject
24 to sales tax shall be deemed the employees of the client for
25 purposes of collecting and levying sales tax on the services
26 performed by the covered employee. Nothing contained in this
27 chapter shall relieve a client of any sales tax liability with
28 respect to its goods or services. Any tax upon professional
29 employer services shall be limited to the administrative fee.

30 Sec. 8. NEW SECTION. 95.8 BENEFIT PLANS.

31 1. A client and a professional employer organization shall
32 each be deemed an employer for purposes of sponsoring
33 retirement and welfare benefit plans for its covered
34 employees.

35 2. A fully insured welfare benefit plan offered to the

1 covered employees of a single professional employer
2 organization shall be considered a single employer welfare
3 benefit plan and shall not be considered a multiple employer
4 welfare arrangement as defined in section 3 of the federal
5 Employee Retirement Income Security Act of 1974, 29 U.S.C. §
6 1002, paragraph 40, and referred to in section 507A.4.

7 3. If a professional employer organization offers to its
8 covered employees any health benefit plan which is not fully
9 insured by an authorized insurer, the plan shall do all of the
10 following:

11 a. Utilize a third-party administrator licensed to do
12 business in this state.

13 b. Hold all plan assets, including participant
14 contributions, in a trust account.

15 c. Provide sound reserves for such plan as determined
16 using generally accepted actuarial standards.

17 Sec. 9. NEW SECTION. 95.9 WORKERS' COMPENSATION.

18 1. The responsibility to obtain workers' compensation
19 coverage for covered employees, from a carrier licensed to do
20 business in this state and otherwise in compliance with all
21 applicable requirements, shall be specifically allocated in
22 the professional employer agreement to either the client or
23 the professional employer organization. If such
24 responsibility is allocated to the professional employer
25 organization under any such agreement, such agreement shall
26 require that the professional employer organization maintain
27 and provide to the client, at the termination of the agreement
28 if requested by the client, records regarding the loss
29 experience related to workers' compensation insurance provided
30 to covered employees pursuant to such agreement.

31 2. Both the client and the professional employer
32 organization shall be considered the employer for the purpose
33 of coverage under the workers' compensation laws provided in
34 chapters 85, 85A, and 85B, and both the professional employer
35 organization and its client shall be entitled to protection of

1 the exclusive remedy provision in section 85.20, irrespective
2 of which coemployer obtains such workers' compensation
3 coverage.

4 Sec. 10. NEW SECTION. 95.10 UNEMPLOYMENT COMPENSATION
5 INSURANCE.

6 For purposes of the Iowa employment security law in chapter
7 96, covered employees of a registered professional employer
8 organization are considered the employees of the client. The
9 professional employer organization shall be responsible for
10 the payment of contributions, penalties, and interest on wages
11 paid by the professional employer organization to its covered
12 employees during the term of the applicable professional
13 employer agreement.

14 Sec. 11. NEW SECTION. 95.11 SEVERABILITY.

15 The provisions of this chapter are severable. If any
16 provision of this chapter, or application thereof to any
17 person or circumstance, is held invalid, such invalidity shall
18 not affect other provisions or applications of this chapter
19 which can be given effect without the invalid provision or
20 application.

21

EXPLANATION

22 This bill creates the professional employer organization
23 recognition and registration Act in new Code chapter 95. A
24 professional employer organization is required to register
25 annually with the department of workforce development as
26 provided in the bill. The bill provides requirements for the
27 application, renewal, confidentiality, applicable fees, and
28 proof of financial capability regarding the registration of
29 professional employer organizations.

30 The bill provides for the rights, duties, and obligations
31 of professional employer organizations doing business in this
32 state. The bill provides that the relationship between a
33 professional employer organization and its client must be
34 governed by a professional employer agreement which must
35 contain information regarding the rights of the professional

1 employer organization and the client, allocate certain
2 obligations of the professional employer organization and the
3 client, and may not affect rights under collective bargaining
4 agreements, licensing requirements, tax credits, or other
5 government incentives. The professional employer organization
6 must provide notice to each of its employees covered by a
7 professional employer agreement of the obligations of the
8 professional employer organization and the client under the
9 agreement. The bill allocates liability and limits of
10 liability for certain actions and responsibilities of the
11 client and the professional employer organization.

12 The bill specifies when either the client or professional
13 employer organization or both are considered the employer
14 under laws governing taxation, retirement and health benefit
15 plans, workers' compensation, and unemployment insurance. The
16 bill provides definitions of terms used in the chapter and
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18 severable if any portion is held invalid.

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