



National Association
of Professional Employer Organizations

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**Before the Kansas House Committee on Commerce
Testimony of Tim Tucker, Vice President of Government Affairs
National Association of Professional Employer Organizations (NAPEO)
Senate Bill 413: Professional Employer Organizations (PEOs)
March 14, 2012**

Chairman Brown and Committee Members,

My name is Tim Tucker and I represent the National Association of Professional Employer Organizations (NAPEO). On behalf of our entire membership and specifically our members located and doing business in Kansas, I am here this today to testify in support of Senate Bill 413, a measure that will provide the a regulatory framework and set minimum standards for professional employer organizations in Kansas.

What is a professional employer organization (PEO)?

A PEO is a business that partners with an existing small business to manage their human resources programs and activities. These programs and activities include employee benefits such as health plans, Section 125 pre-tax plans, and retirement services. It also includes processing payroll checks and deposits, remitting federal and state payroll taxes, providing HR policies and employee handbooks, and other aspects of the "business of being an employer". By partnering with small businesses to provide these services, PEO's enable their small business clients to focus on the core competencies that enable them to maintain and grow their business. *A PEO is a full-service HR solution designed to meet the needs of small business by co-employing their client's worksite employees.*

| Professional Employer Organizations |
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| <ul style="list-style-type: none"> • PEOs are <u>not</u> temporary help companies (or other similar businesses). • Provides off-site HR services (like healthcare) to small business by co-employing small business workers. • Under this legislation: must register and file audited financial statements, with the state. Must also meet minimum financial standards. |

Who is a PEO client?

The average PEO client is a small business with 5 to 20 employees. By forming a co-employment relationship with these small businesses and their employees, PEOs provide small businesses with critical assistance with the *business of being an employer*. The PEO relationship allows small businesses to attract and retain a higher quality workforce.

Why is legislation needed?

PEOs provide important and valuable services to small businesses. Legislation would provide valuable guidance and legal certainty to those small businesses that partner with PEOs. These clarifications reduce confusion on how state agencies administer various employment laws. The PEO industry strongly believes it is important that minimum standards be established that create a level and competitive playing field. Additionally, this legislation would provide clear guidance to state agencies responsible for the overseeing the industry.

What does this bill do?

This legislation creates a comprehensive regulatory framework for PEO services used by small businesses. It provides clarity by creating industry definitions, defining relationships, duties, and responsibilities, as well as reaffirming that using PEO services do not diminish existing rights and benefits. Minimum industry standards highlights include:

- annual registration with the commonwealth including an audited financial statement (without qualification as to "going concern");
- meeting the minimum financial standard; and
- meeting the regulatory framework for PEOs.

Does this bill create a barrier to market?

The PEO industry is different than other licensed professions and occupations. The majority of this bill is aimed at providing small businesses that choose to use PEO services guidance and legal certainty. The financial and operational requirements are proven minimum standards that have not proven to be a harmful to market entry and help ensure the obligations PEOs make are met.

What is this legislation based on?

The concept of regulating PEOs is not a new one. The provisions contained in this bill are based on PEO model legislation as well as laws found in surrounding states. This bill would bring Kansas current with many of the requirements found in 35 other states. Over the past 25 years, these standards and requirements have been tested and refined to strike the balance of the need for responsible regulation.

Again, **I urge your support of Senate Bill 413.** Thank you for your time and consideration.

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**PEO Certification, Licensing and
Registration Acts**

PEOs currently operate in all fifty states. The following chart identifies the acts that are more comprehensive and specifically applicable to the PEO industry¹ (those below in italics are limited or relate to special requirements). There are other states have statutes specifically referencing the PEOs, recognizing PEOs as employers, or providing business registration or reporting requirements (see e.g. Georgia Code § 34-7-6, Idaho Statutes § 44-2401 et seq., or the Revised Code of Washington § 19.02.010)

In addition, state unemployment codes, workers' compensation acts, and other statutes may have PEO specific references or general employer registration or reporting requirements that would apply to PEOs.

| PEO Recognition, Registration and Licensing Provisions | | | |
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| State | Type of Act | Citation | Agency |
| AL | Registration | The Alabama Professional Employer Organization Registration Act, AL Stats. § 25-14-1, et seq. | Department of Industrial Relations. |
| AR | Licensing | Arkansas Professional Employer Organization Recognition Act, AR Code §23-92-401 et. seq., | Insurance |
| AZ | Registration | Section 1, Title 23, Chapter 3, Article 4 Arizona Revised Statutes – Professional Employer Organizations AZ Revised Stats. §23-561, et al | Secretary of State and Industrial Commission |
| CA | Registration | CA Labor Code § § 2671, 2672, and 2675 <i>[PEOs with garment industry clients only]</i> | Dept. of Industrial Relations |
| CO | Certification | Colorado Rev. Statutes §8-70-114 et. seq. | Department of Labor |
| CT | Registration | CGS §31-221a et. seq. | Department of Labor |
| FL | Licensing | Employee Leasing Companies, Florida Stat. Ann. § 468.520 et. seq. | Florida Board of Employee Leasing |
| HI | Registration | SB 1062 (enacted 2010 - effective July 1, 2011) | Dept. of Labor and Industrial Relations |
| IL | Licensing | Employee Leasing Company Act (Jan.1, 1998), 215 ILCS §113 (1997) | Dept. of Insurance |
| IN | Registration | P.L. 245-2005 Professional Employer Organizations. IC §27-16-1-1, et seq. | Dept. of Insurance |
| KY | Registration | Registration of Employee Leasing Companies, Kentucky Revised Statutes § 342.615 | Dept. of Workers' Claims |
| LA | Registration | LA RS §23:1761 et seq. and RS §22:1210.51 et seq. | Depts. Labor & Insurance |
| MA | Registration | <i>430 CMR §§5.07 through 5.13 [Specific Registration/Reporting for Unemployment Insurance only]</i> | <i>Department of Labor and Workforce Development</i> |
| ME | Registration | Employee Leasing Companies - Maine Revised Statutes Title 32, §14051 – 14058 | Dept. of Insurance |
| MI | Licensing | Michigan Professional Employer Organization Regulatory Act. Act No. 370, Public Acts of 2010 (effective July 1, 2011) | Dept. of Energy, Labor & Economic Growth |
| MN | Registration | Workers' Compensation Act - Lessors of Employees Minnesota Statutes §79.255 | Dept. of Commerce |
| MO | Registration | <i>[Bonding is required of a PEO is sole liability for UI is desired by the PEO] MO has authority to register PEOs under</i> | |

¹ Older statutes refer to the industry as the Staff Leasing or Employee Leasing industry.

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| | | <i>Workers' Compensation but has never implemented the provision.]</i> | |
| MT | Licensing | Profession Employer Organizations and Groups Licensing. - Montana Code Annotated §39-8-202 | Dept .of Labor & Employment Relations |
| NE | Registration | LB 579 enacted 2010 | Department of Labor |
| NV | Registration | Employee Leasing Companies Nevada Revised Statutes - Title 53 § 616B.670 | Div. of Industrial Rel. |
| NH | Licensing | Employee Leasing Companies - New Hampshire Revised Statutes Title 23 § 277-B:1 et seq. | Dept. of Labor |
| NJ | Registration | An Act Concerning Employee Leasing Companies NJ Statute 34:8-67 et seq. | Dept. of Labor |
| NM | Licensing | Employee Leasing Act New Mexico Statutes § 60-13A-1 et seq. | Dept. of Regulation and Licensing |
| NY | Registration | NY Professional Employer Act NY Labor Code Article 31, Section 915 et seq. | Dept of Labor |
| NC | Registration | North Carolina Professional Employer Organization Act, NC General Statute 58-89A-1 et seq. | Dept of Insurance |
| ND | Licensing | Professional Employer Organizations, ND Code §§ 43-55-01 et seq. | Sec. of State |
| OH | Registration | Professional Employer Organizations Ohio Revised Code §4125.01 et seq. | Bureau of Workers' Comp. |
| OK | Registration | Oklahoma Professional Employer Organization Recognition Act, Statutes 40-600.1 et seq. | Insurance |
| OR | Licensing | An Act Related to Employee Leasing Companies under Workers' Compensation Law Oregon Revised Statutes § 656.850 et.seq. | Consumer and Business Services |
| PA | | <i>[Special quarterly reporting required for unemployment insurance]</i> | |
| RI | Registration | Professional Employer Organizations Act of 2004, General Laws of Rhode Island §5-75-1 et seq. | Dept. of Admin., Div. of Taxation |
| SC | Licensing | Regulation of Professional Employer Organizations South Carolina Code of Laws § 40-68-10 et. seq. | Dept of Consumer Affairs |
| TN | Licensing | Tennessee Employee Leasing Act Tennessee Code Annotated § 62-43-101 | Commerce and Insurance |
| TX | Licensing | The Staff Leasing Services Act, Texas Civil Statutes, Article 9104. | Licensing and Regulation |
| UT | Licensing | Professional Employer Organization Registration Act Utah Code § 58-59-101 | Commerce |
| VT | Licensing | Employee Leasing Companies Vermont Statutes Annotated §§ 21-1031 et. seq. | Labor and Industry |
| VA | Registration | Workers' Compensation Act. VA Statute § 65.2-101 | WC Commission |
| WI | Registration | Professional Employer Organizations - Registration Wisconsin Statutes Annotated § 461.01 et. seq. | Dept. of Licensing and Regulation |
| WV | Licensing | Professional Employer Organizations W. Va. Code, § 33-46A-1 et. seq. | Commissioner of Insurance |

(As of 6.15.10)