

## SENATE BILL No. 121

By Committee on Commerce

1-24

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AN ACT relating to professional employer organizations; establishing certain minimum standards applicable to all professional employer organizations operating in the state.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. It is hereby declared that the professional employer organization provides a valuable service to commerce and the citizens of this state. The rights and responsibilities of the professional employer organization must be clearly defined. Under agreed terms, two entities are both employers of the same employee. The recognition of this relationship should be based on the nature of the relationship as defined by a written contract between a professional employer organization and a work-site employer rather than left to the common law of the state. Professional employer organizations shall be the coemployer or the employing unit for all employees covered by a professional employer contract, and a professional employer organization may aggregate all employees under the individual contracts to the extent allowed by law.

Sec. 2. Unless the context clearly requires otherwise, these terms are defined as follows:

(a) "Administrative fee" means those amounts charged by the professional employer organization to the client over and above amounts applied to the mandatory state and federal taxes, wages of assigned workers and amounts applied to premiums or contributions for benefits provided for assigned workers.

(b) "Assigned worker" means a person having an employment relationship with both the professional employer organization and the client.

(c) "Client" means a person who contracts with a professional employer organization to obtain employer services from another person through a professional employer arrangement.

(d) "Person" means an individual, an association, a company, a firm, a partnership, a corporation or any other form of legally recognized entity.

(e) "Professional employer arrangement" means an arrangement, under contract or whereby:

(1) A professional employer organization agrees to employ all or a majority of a client's workforce;

1 (2) the arrangement is intended to be, or is, ongoing rather than tem-  
2 porary in nature;

3 (3) employer responsibilities for workers under the arrangement are  
4 in fact shared by the professional employer organization and the client;  
5 and

6 (4) for the purposes of this act, a professional employer arrangement  
7 shall not include:

8 (A) Arrangements wherein a person, whose principal business activity  
9 is not entering into professional employer arrangements, shares employ-  
10 ees with a commonly owned company within the meaning of section  
11 414(b) and (c) of the federal internal revenue code of 1986, as amended,  
12 and which does not hold itself out as a professional employer organization.

13 (B) Arrangements in which a person assumes full responsibility for  
14 the product or service performed by such person or such person's agents  
15 and retains and exercises, both legally and in fact, a right of direction and  
16 control over the individuals whose services are supplied under such con-  
17 tractual arrangements, and such person and such person's agents perform  
18 a specified function for the client which is separate and divisible from the  
19 primary business or operations of the client.

20 (C) Any person otherwise subject to this act if, during any fiscal year  
21 of the person commencing after July 1, 2000, the person pays total gross  
22 wages to employees employed by the person in the state under one or  
23 more professional employer arrangements which do not exceed 5% of the  
24 total gross wages paid to all employees employed by the person in the  
25 state during the same fiscal year under all arrangements described in  
26 paragraph (4) and that each person does not advertise or hold itself out  
27 to the public as providing services as a professional employer organization.

28 (f) "Professional employer organization" means any person engaged  
29 in providing the services of employees pursuant to one or more profes-  
30 sional employer arrangements or any person that represents itself to the  
31 public as providing services pursuant to a professional employer  
32 arrangement.

33 Sec. 3. This act shall not apply to labor organizations as defined by  
34 the national labor relations act or to any political subdivision of the state,  
35 the United States, and any programs or agencies thereof, or to any entity  
36 which meets the definitions contained in paragraph (e)(4) of section 2  
37 and amendments thereto. A professional employer arrangement shall  
38 have no effect on any existing collective bargaining agreements. Notwith-  
39 standing any statements in this subsection to the contrary nothing in this  
40 act shall prohibit a client which is a party to a collective bargaining agree-  
41 ment from contracting with a professional employer organization pro-  
42 vided that the labor organization consents to such arrangement.

43 Sec. 4. (a) Each professional employer organization shall meet the

1 following standards:

2 (1) Have a written contract between the client and the professional  
3 employer organization setting forth the responsibilities and duties of each  
4 party. The contract shall contain a description of the type of services to  
5 be rendered by the professional employer organization and the respective  
6 rights and obligations of the parties and the contract shall also provide  
7 that the professional employer organization:

8 (A) Reserves a right of direction and control over workers assigned  
9 to the client's location. However, the client shall maintain such direction  
10 and control over the assigned workers as is necessary to conduct the  
11 client's business and without which the client would be unable to conduct  
12 its business, discharge any fiduciary responsibility which it may have, or  
13 comply with any applicable licensure;

14 (B) assumes responsibility for the withholding and remittance of pay-  
15 roll-related taxes and employee benefits from its own accounts, as long  
16 as the contract between the client and professional employer organization  
17 remains in force; and

18 (C) retains authority to hire, terminate, discipline and reassign  
19 workers.

20 (2) Provide written notice of the general nature of the relationship  
21 between the professional employer organization and the client to the  
22 assigned workers located at the client work site.

23 (b) A professional employer organization shall be considered an em-  
24 ployer for the purposes of withholding state income tax of the assigned  
25 workers pursuant to the Kansas income tax act.

26 (c) As long as the professional employer organization's contract with  
27 the client remains in force, the professional employer organization shall  
28 have a right to and shall assume the following responsibilities:

29 (1) Pay wages and collect, report and pay employment taxes of its  
30 assigned workers from its own accounts;

31 (2) pay unemployment taxes as required by the employment security  
32 law;

33 (3) secure and provide all required workers compensation coverage  
34 for its assigned workers either in its own name or in its clients name.

35 (d) Both client and the professional employer organization shall be  
36 considered the employer for the purpose of coverage under the workers  
37 compensation act.

38 (e) Both the professional employer organization and its client shall  
39 be entitled to protection of the exclusive remedy provision of the workers  
40 compensation act irrespective of which entity secures and provides such  
41 workers compensation coverage.

42 (f) A recognized professional employer organization shall be deemed  
43 the employer for the purposes of sponsoring and maintaining benefit and

1 welfare plans for its assigned workers.

2 (g) In the absence of any contrary provisions contained in the contract  
3 between the client and the professional employer organization, the pro-  
4 fessional employer organization arrangement that exists between a pro-  
5 fessional employer organization and its clients shall be interpreted for the  
6 purposes of insurance and bonding as follows:

7 (1) A professional employer organization shall not be liable for the  
8 acts, errors or omissions of a client or of any assigned worker when such  
9 client or worker is acting under the direction and control of a client. A  
10 client shall not be liable for the acts, errors or omissions of a professional  
11 employer organization or of any assigned worker of a professional em-  
12 ployer organization when such professional employer organization or  
13 worker is acting under the direction and control of the professional em-  
14 ployer organization. This section shall not limit any contractual liability,  
15 as may be expressly agreed upon, between the professional employer  
16 organization and the client, nor shall this section limit the liabilities of  
17 any professional employer organization or client as defined elsewhere in  
18 this act; and

19 (2) assigned workers shall not be deemed employees of the profes-  
20 sional employer organization for purposes of general liability insurance,  
21 automobile insurance, fidelity bonds, surety bonds or employer's liability  
22 insurance other than workers compensation insurance carried by the pro-  
23 fessional employer organization unless the assigned workers are included  
24 by specific reference in the applicable prearranged employment contract,  
25 insurance contract or bond.

26 (h) The sale of professional employer services in conformance with  
27 the provisions of this chapter shall not constitute the sale of insurance for  
28 purposes of chapter 40 of the Kansas Statutes Annotated.

29 (i) A professional employer organization is not engaged in the unau-  
30 thorized practice of an occupation, trade, or profession that is licensed,  
31 certified or otherwise regulated by a governmental entity solely by en-  
32 tering into a professional employer arrangement with a client that is so  
33 licensed, certified or regulated.

34 Sec. 5. (a) Financing of unemployment insurance benefits for work-  
35 ers assigned by a professional employer organization to a nonprofit or-  
36 ganization or a unit of government shall be paid by the unit or organization  
37 as provided by the employment security law. Unemployment insurance  
38 benefits for workers assigned by a professional employer organization to  
39 any client other than a nonprofit organization or governmental unit shall  
40 be made in accordance with the provisions of this section.

41 (b) During the term of a professional employer organization agree-  
42 ment, a professional employer organization is liable in accordance with  
43 the provisions of employment security law, for the payment of contribu-

1 tions, penalties and interest on wages paid to employees assigned to a  
2 client company. The professional employer organization shall report and  
3 pay all contributions under its state employer account number, using the  
4 applicable contribution rate.

5 (c) When a client ceases to pay wages, such client shall be subject to  
6 termination of its employer account and experience rating records in the  
7 same manner as any other employer, in accordance with the provisions  
8 of employment security law. If a client which has ceased to pay wages  
9 subsequently resumes paying wages, it will be assigned the appropriate  
10 experience rate in accordance with the provisions of employment security  
11 law.

12 Sec. 6. (a) Nothing in this act exempts a client of a professional em-  
13 ployer organization, nor an assigned worker, from any other state, local  
14 or federal license or registration requirement.

15 (b) Any individual who must be licensed, registered or certified ac-  
16 cording to law and who is an assigned worker is deemed an employee of  
17 the client for purposes of the license, registration or certification.

18 (c) A professional employer organization does not engage in an oc-  
19 cupation, trade or profession that is licensed, certified or otherwise reg-  
20 ulated by a governmental entity solely by entering into a professional  
21 employer arrangement with a client company or an assigned worker.

22 Sec. 7. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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