

SENATE BILL No. 156

By Committee on Commerce

1-23

9 AN ACT enacting the Kansas professional employer organization regis-
10 tration act.

11

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

13 Section 1. The provisions of this act shall be known and may be cited
14 as the professional employer organization registration act.

15 Sec. 2. As used in this act:

16 (a) "Client" means any person who enters into a professional em-
17 ployer agreement with a professional employer organization.

18 (b) "Co-employer" means either a professional employer organiza-
19 tion or a client.

20 (c) "Co-employment relationship" means a relationship which is in-
21 tended to be an ongoing relationship rather than a temporary or project
22 specific one, wherein the rights, duties and obligations of an employer
23 which arise out of an employment relationship have been allocated be-
24 tween co-employers pursuant to a professional employer agreement and
25 this act. In a co-employment relationship:

26 (1) The professional employer organization is entitled to enforce only
27 employer rights and is subject to only those obligations specifically allo-
28 cated to the professional employer organization by the professional em-
29 ployer agreement or this act;

30 (2) the client is entitled to enforce those rights and obligated to pro-
31 vide and perform those employer obligations allocated to the client by
32 the professional employer agreement and this act; and

33 (3) the client is entitled to enforce any right and obligated to perform
34 any obligation of an employer not specifically allocated to the professional
35 employer organization by the professional employer agreement or this
36 act.

37 (d) "Covered employee" means an individual having a co-employ-
38 ment relationship with a professional employer organization and a client
39 where:

40 (1) The individual has received written notice of co-employment with
41 the professional employer organization; and

42 (2) the individual's co-employment relationship is pursuant to a pro-
43 fessional employer agreement subject to this act. Individuals who are

1 officers, directors, shareholders, partners and managers of the client will
2 be covered employees to the extent the professional employer organiza-
3 tion and the client have expressly agreed in the professional employer
4 agreement that such individuals would be covered employees and pro-
5 vided the individuals meet the criteria of this paragraph and act as op-
6 erational managers or perform day-to-day operational services for the
7 client.

8 (e) “Department” means the department of labor.

9 (f) “Direct hire employee” of a client or a professional employer or-
10 ganization means an individual who is an employee within the meaning
11 of the workers’ compensation act and is not a professional employer or-
12 ganization co-employee.

13 (g) “Direct purchase basis” means an arrangement in which all con-
14 tractual obligations under the insurance policy run directly between the
15 insurer and the client without the involvement of the professional em-
16 ployer organization, whether the arrangement is negotiated solely be-
17 tween the client and the insurer or is negotiated with the assistance of
18 the professional employer organization on terms that might not be avail-
19 able to the general public.

20 (h) “Independent certified public accountant” means a person who
21 has been certified by a state examining board as having met the state’s
22 legal requirements for the practice of public accounting and conforms to
23 the standards as contained in the code of professional ethics of the Amer-
24 ican institute of certified public accountants.

25 (i) “Master policy basis” means an arrangement under which a single
26 policy issued to the PEO provides coverage for more than one client and
27 provides coverage to the PEO with respect to its direct hire employees.

28 (j) “Multiple coordinated policy basis” means an arrangement under
29 which a separate policy is issued to or on behalf of each client or group
30 of affiliated clients but payment obligations and certain policy commu-
31 nications are coordinated through the professional employer organization.
32 A multiple coordinated policy shall unconditionally obligate the insurer
33 to pay all benefits due under the workers’ compensation laws, whether
34 or not the professional employer organization and client comply with their
35 obligations under the policy.

36 (k) “PEO group” means two or more professional employer organi-
37 zations that are majority owned or commonly controlled by the same
38 entity, parent or controlling persons.

39 (l) “Person” means any individual, partnership, corporation, limited
40 liability company, association or any other form of legally recognized
41 entity.

42 (m) “Professional employer agreement” means a written contract by
43 and between a client and a professional employer organization that

1 provides:

2 (1) For the co-employment of covered employees;

3 (2) for the allocation of employer rights and obligations between the
4 client and the professional employer organization with respect to the cov-
5 ered employees; and

6 (3) that the professional employer organization and the client assume
7 the responsibilities required by this act.

8 (n) "Professional employer organization" or "PEO" means any per-
9 son engaged in the business of providing professional employer services.
10 A person engaged in the business of providing professional employer
11 services shall be subject to registration and regulation under this act re-
12 gardless of its use of the term or conducting business as a professional
13 employer organization, PEO, staff leasing company, registered staff leas-
14 ing company, employee leasing company, administrative employer or any
15 other name.

16 (o) "Professional employer services" shall mean the service of enter-
17 ing into co-employment relationships under this act in which all or a
18 majority of the employees providing services to a client or to a division
19 or work unit of a client are covered employees.

20 (p) "Registrant" means a PEO registered under this act.

21 (q) "Secretary" means the secretary of labor.

22 (r) "Temporary help services" means services consisting of a person:

23 (1) Recruiting and hiring its own employees;

24 (2) finding other organizations that need the services of those
25 employees;

26 (3) assigning those employees to perform work at or services for the
27 other organizations to support or supplement the other organizations'
28 workforces or to provide assistance in special work situations such as, but
29 not limited to, employee absences, skill shortages, seasonal workloads or
30 to perform special assignments or projects; and

31 (4) customarily attempting to reassign the employees to other organ-
32 izations when they finish each assignment.

33 Sec. 3. (a) Nothing contained in this act or in any professional em-
34 ployer agreement shall affect, modify or amend any collective bargaining
35 agreement, or the rights or obligations of any client, PEO or covered
36 employee under the federal national labor relations act, the federal rail-
37 way labor act or K.S.A. 44-614, and amendments thereto.

38 (b) Nothing in this act or in any professional employer agreement
39 shall:

40 (1) Diminish, abolish or remove rights of covered employees to a
41 client or obligations of the client to a covered employee existing prior to
42 the effective date of the professional employer agreement;

43 (2) affect, modify or amend any contractual relationship or restrictive

1 covenant between a covered employee and any client in effect at the time
2 a professional employer agreement becomes effective. Nor shall it pro-
3 hibit or amend any contractual relationship or restrictive covenant that is
4 entered into subsequently between a client and a covered employee. A
5 PEO shall have no responsibility or liability in connection with, or arising
6 out of, any existing or new contractual relationship or restrictive covenant
7 unless the PEO has specifically agreed otherwise in writing; or

8 (3) create any new or additional enforceable right of a covered em-
9 ployee against a PEO that is not specifically provided by the professional
10 employer agreement or this act.

11 (c) Nothing contained in this act or any professional employer agree-
12 ment shall affect, modify or amend any state, local or federal licensing,
13 registration or certification requirement applicable to any client or cov-
14 ered employee.

15 (d) A covered employee who must be licensed, registered or certified
16 according to law or regulation is deemed solely an employee of the client
17 for purposes of any license, registration or certification requirement.

18 (e) A PEO shall not be deemed to engage in any occupation, trade,
19 profession or other activity that is subject to licensing, registration or
20 certification requirements, or is otherwise regulated by a governmental
21 entity solely by entering into and maintaining a co-employment relation-
22 ship with a covered employee who is subject to such requirements or
23 regulation.

24 (f) A client shall have the sole right of direction and control of the
25 professional or licensed activities of covered employees and of client's
26 business. Covered employees and clients shall remain subject to regula-
27 tion by the regulatory or governmental entity responsible for licensing,
28 registration or certification of the covered employees or clients.

29 (g) With respect to a bid, contract, purchase order or agreement en-
30 tered into with the state or a political subdivision of the state, a client
31 company's status or certification as a small, minority-owned, disadvan-
32 taged or woman-owned business enterprise or as a historically underutil-
33 ized business is not affected because the client company has entered into
34 an agreement with a PEO or uses the services of a PEO.

35 Sec. 4. No person shall open, operate or maintain a professional em-
36 ployer organization for the purpose of providing professional employer
37 services or use the names PEO, professional employer organization, staff
38 leasing company, registered staff leasing company, employee leasing, ad-
39 ministrative employer or other title representing professional employer
40 services without first obtaining a registration from the department pur-
41 suant to this act.

42 Sec. 5. (a) Each applicant for registration under this act shall provide
43 the department with the following information:

- 1 (1) The name or names under which the PEO conducts business;
- 2 (2) the address of the principal place of business of the PEO and the
3 address of each office it maintains in this state;
- 4 (3) the PEO's taxpayer or employer identification number;
- 5 (4) a list by jurisdiction of each name under which the PEO has op-
6 erated in the preceding five years, including any alternative names, names
7 of predecessors and, if known, successor business entities;
- 8 (5) a statement of ownership, which shall include the name and evi-
9 dence of the business experience of any person that, individually or acting
10 in concert with one or more other persons, owns or controls, directly or
11 indirectly, 25% or more of the equity interests of the PEO;
- 12 (6) a statement of management, which shall include the name and
13 evidence of the business experience of any person who serves as presi-
14 dent, chief executive officer or otherwise has the authority to act as senior
15 executive officer of the PEO;
- 16 (7) an attestation from an independent certified public accountant
17 licensed to practice in the jurisdiction where the accountant is located
18 that:
 - 19 (A) The PEO has financial statements that present the financial con-
20 dition of the PEO or PEO group fairly and accurately in accordance with
21 generally accepted accounting principles;
 - 22 (B) (i) an audit of the PEO or PEO group's financial statements has
23 been performed within the last 13 months by an independent certified
24 public accountant licensed to practice in the jurisdiction where the ac-
25 countant is located resulting in an audit letter that is without qualification
26 as to the going concern status of the PEO; or
27 (ii) the PEO that has not had sufficient operating history to have had
28 an audit performed on financial statements that are based upon at least
29 12 months of operating history;
 - 30 (C) the PEO is in compliance with the requirements of section 12 of
31 this act; and
 - 32 (D) that all liabilities for wages, employee benefit plan premiums,
33 federal, state and local withholding taxes, unemployment insurance taxes
34 and workers' compensation premiums have been paid in a timely manner.
- 35 (b) Each PEO operating within this state as of the effective date of
36 this act shall complete its initial registration not later than 180 days after
37 the effective date of this act. Such initial registration shall be valid until
38 the end of the PEO's first fiscal year end that is more than one year after
39 the effective date of this act.
- 40 (c) Each PEO not operating within this state as of the effective date
41 of this act shall complete its initial registration prior to commencement
42 of operations within this state.
- 43 Sec. 6. (a) Within 180 days after the end of a registrant's fiscal year,

1 a PEO or PEO group shall renew its registration by:

2 (1) Notifying the department of any changes in the information pro-
3 vided in the registrant's most recent registration or renewal; and

4 (2) providing the department with an attestation from an independ-
5 ent certified public accountant licensed to practice in the jurisdiction
6 where the accountant is located that:

7 (A) The PEO has financial statements that present the financial con-
8 dition of the PEO or PEO group fairly and accurately in accordance with
9 generally accepted accounting principles;

10 (B) an audit of the PEO's financial statements for the PEO or PEO
11 group's preceding fiscal year has been performed within the last 180 days
12 by an independent certified public accountant licensed to practice in the
13 jurisdiction where the accountant is located resulting in an audit letter
14 that is without qualification as to the going concern status of the PEO;

15 (C) the PEO is in compliance with the requirements of section 12 of
16 this act; and

17 (D) that all liabilities for wages, employee benefit plan premiums,
18 federal, state and local withholding taxes, unemployment taxes and work-
19 ers' compensation premiums incurred during the previous fiscal year have
20 been paid.

21 (b) An applicant may apply with the department for an extension of
22 time to comply with the requirements of subsection (a)(2) of this section,
23 but any such request must be accompanied by a letter from the inde-
24 pendent certified public accountant stating the reasons for the delay and
25 the anticipated date at which the attestation required by this subsection
26 will be submitted to the department.

27 Sec. 7. (a) PEOs in a PEO group may satisfy the registration, re-
28 porting and attestation requirements of this registration law on a com-
29 bined or consolidated basis provided that each member of the PEO group
30 guarantees the obligations under this act of each other member of the
31 PEO group. In the case of a PEO group that submits a single attestation
32 of the financial condition of the PEO group and the attestation includes
33 entities that are not PEOs or that are not in the PEO group, the con-
34 trolling entity of the PEO group under the consolidated or combined
35 attestation must guarantee the obligations of the PEOs in the PEO group.

36 Sec. 8. (a) A PEO is eligible for a limited registration under this act
37 if the PEO:

38 (1) Submits a properly executed request for limited registration on a
39 form provided by the department;

40 (2) is domiciled outside this state and is licensed or registered as a
41 professional employer organization in another state;

42 (3) does not maintain an office in this state or directly solicit clients
43 located or domiciled within this state; and

1 (4) does not have more than 50 covered employees employed or dom-
2 icated in this state on any given day.

3 (b) A limited registration is valid for one year, and may be renewed.

4 (c) A PEO seeking limited registration under this section shall pro-
5 vide the department with information and documentation necessary to
6 show that the PEO qualifies for a limited registration.

7 (d) Section 5(a)(7) and section 6(a)(2) of this act shall not apply to
8 applicants for limited registration.

9 Sec. 9. The department may by rule and regulation provide for the
10 acceptance of an affidavit or certification of a bonded, independent and
11 qualified assurance organization that is licensed as an assurance organi-
12 zation in another state, and has been approved by the secretary certifying
13 qualifications of a professional employer organization in lieu of the
14 requirements of sections 5(a)(7) and section 6(a)(2) of this act.

15 Sec. 10. (a) The department shall maintain a list of professional em-
16 ployer organizations registered under this act.

17 (b) The department may prescribe forms necessary to promote the
18 efficient administration of this act.

19 (c) All records, reports and other information obtained from a PEO
20 under this act, except to the extent necessary for the proper administra-
21 tion of this act by the department shall be confidential and shall not be
22 published or open to public inspection other than to public employees in
23 the performance of their public duties.

24 Sec. 11. (a) No fee charged pursuant to this act shall exceed the
25 amount reasonably necessary for the administration of this act. The
26 amount of registration fees shall be set by the secretary as follows:

27 (1) Upon filing an initial registration statement under this act, a PEO
28 shall pay an initial registration fee in an amount of not to exceed \$1,000.

29 (2) Upon each annual renewal of a registration statement filed under
30 this act, a PEO shall pay a renewal fee in an amount of not to exceed
31 \$1,000.

32 (3) The department shall determine by rule any fee to be charged
33 for a group registration.

34 (4) Each PEO seeking limited registration under the terms of section
35 8 shall pay a fee in an amount of not to exceed \$500 upon initial appli-
36 cation for limited registration and upon each annual renewal of a limited
37 registration.

38 (5) A PEO seeking alternative registration pursuant to section 9 of
39 this act shall pay an initial and annual fee in an amount of not to exceed
40 \$1,000.

41 (b) There is hereby established in the state treasury the professional
42 organization registration fund which shall be administered by the secre-
43 tary. All expenditures from the fund shall be made in accordance with

1 appropriation acts upon warrants of the director of accounts and reports
2 issued pursuant to vouchers approved by the secretary.

3 All moneys received by the secretary under this section shall be de-
4 posited in the state treasury at least monthly in accordance with provisions
5 of K.S.A. 75-4215, and amendments thereto, and shall be credited to the
6 professional organization registration fund.

7 Sec. 12. (a) Except as provided in subsections (b), (c) and (d) of this
8 section, a PEO or a PEO group shall maintain, at all times, \$100,000 in
9 working capital, that is current assets minus current liabilities, as defined
10 by generally accepted accounting principles.

11 (b) In lieu of the working capital requirements of subsection (a), a
12 PEO or PEO group may provide to the department a bond, irrevocable
13 letter of credit or securities with a minimum market value of \$100,000.

14 (c) A PEO that has not had sufficient operating history to have re-
15 quired an audit of its financial statements shall provide to the department
16 a bond, irrevocable letter of credit or securities with a minimum market
17 value of \$100,000.

18 (d) Any PEO or PEO group that does not have positive working capi-
19 tal shall provide to the department a bond, irrevocable letter of credit or
20 securities with a market value equal to or greater than \$100,000 plus an
21 amount sufficient to cover the deficit in working capital.

22 (e) Any bond submitted pursuant to this subsection shall be held by
23 a depository designated by the department securing payment by the PEO
24 of all taxes, wages, benefits or other entitlement due to or with respect
25 to covered employees, if the PEO does not make such payments when
26 due.

27 Sec. 13. (a) Except as otherwise provided in this act or in the profes-
28 sional employer agreement, in each co-employment relationship:

29 (1) The client shall be entitled to exercise all rights and shall be ob-
30 ligated to perform all duties and responsibilities otherwise applicable to
31 an employer in an employment relationship; and

32 (2) the PEO shall be entitled to exercise only those rights and obli-
33 gated to perform only those duties and responsibilities specifically re-
34 quired by this act or set forth in the professional employer agreement.
35 The rights, duties and obligations of the PEO as co-employer with respect
36 to any covered employee shall be limited to those arising pursuant to the
37 professional employer agreement and this act during the term of co-em-
38 ployment by the PEO of the covered employee.

39 (b) Unless otherwise agreed by the PEO and the client in a profes-
40 sional employer agreement, the client retains the exclusive right to direct
41 and control the covered employees as is necessary to conduct the client's
42 business, to discharge any of the client's fiduciary responsibilities, or to
43 comply with any licensure requirements applicable to the client or to the

1 covered employees.

2 (c) Except as otherwise provided in this act, the co-employment re-
3 lationship between the client and the PEO, and between each co-em-
4 ployer and each covered employee, shall be governed by the professional
5 employer agreement. Each professional employer agreement shall in-
6 clude the following:

7 (1) The allocation of rights, duties and obligations as described in
8 subparagraph (a);

9 (2) provisions stating that the PEO shall have responsibility to pay
10 wages to covered employees; to withhold, collect, report and remit pay-
11 roll-related and unemployment taxes; and, to the extent the PEO has
12 assumed responsibility in the professional employer agreement, to make
13 payments for employee benefits for covered employees. As used in this
14 section, the term “wages” does not include any obligation between a client
15 and a covered employee for payments beyond or in addition to the cov-
16 ered employee’s salary, draw or regular rate of pay, such as bonuses,
17 commissions, severance pay, deferred compensation, profit sharing or
18 vacation, sick or other paid time off pay, unless the PEO has expressly
19 agreed to assume liability for such payments in the professional employer
20 agreement;

21 (3) provisions stating that the PEO shall have a right to hire, discipline
22 and terminate a covered employee, as may be necessary to fulfill the
23 PEO’s responsibilities under this act and the professional employer agree-
24 ment. The client shall have a right to hire, discipline and terminate a
25 covered employee; and

26 (4) provisions allocating the responsibility to obtain workers’ com-
27 pensation coverage for covered employees, from a carrier holding a cer-
28 tificate of authority to do business in this state pursuant to K.S.A. 40-201
29 et seq., and amendments thereto, and otherwise in compliance with all
30 applicable requirements, to either the client or the PEO.

31 (d) With respect to each professional employer agreement entered
32 into by a PEO, the PEO shall provide written notice to each covered
33 employee affected by the agreement of the general nature of the co-
34 employment relationship between and among the PEO, the client and
35 the covered employee.

36 (e) Except to the extent otherwise expressly provided by the appli-
37 cable professional employer agreement:

38 (1) A client shall be solely responsible for the quality, adequacy or
39 safety of the goods or services produced or sold in client’s business;

40 (2) a client shall be solely responsible for directing, supervising, train-
41 ing and controlling the work of the covered employees with respect to
42 the business activities of the client and solely responsible for the acts,
43 errors or omissions of the covered employees with regard to such

1 activities;

2 (3) a client shall not be liable for the acts, errors or omissions of a
3 PEO, or of any covered employee of the client and a PEO when the
4 covered employee is acting under the express direction and control of the
5 PEO;

6 (4) a PEO shall not be liable for the acts, errors or omissions of a
7 client or of any covered employee of the client when such covered em-
8 ployee is acting under the express direction and control of the client;

9 (5) nothing in this subsection shall serve to limit any contractual lia-
10 bility or obligation specifically provided in the written professional em-
11 ployer agreement@d

12 (6) a covered employee is not, solely as the result of being a covered
13 employee of a PEO, an employee of the PEO for purposes of general
14 liability insurance, fidelity bonds, surety bonds, employer's liability which
15 is not covered by workers' compensation or liquor liability insurance car-
16 ried by the PEO unless the covered employees are included by specific
17 reference in the professional employer agreement and applicable prear-
18 ranged employment contract, insurance contract or bond.

19 (f) Covered employees whose services are subject to sales tax shall
20 be deemed the employees of the client for purposes of collecting and
21 levying sales tax on the services performed by the covered employee.
22 Nothing contained in this act shall relieve a client of any sales tax liability
23 with respect to its goods or services.

24 (g) Any tax assessed on a per capita or per employee basis shall be
25 assessed against the client for covered employees and against the profes-
26 sional employer organization for its direct hire employees.

27 (h) In the case of tax imposed or calculated upon the basis of total
28 payroll, the professional employer organization shall be eligible to apply
29 any small business allowance or exemption available to the client for the
30 covered employees for purpose of computing the tax.

31 Sec. 14. (a) A professional employer organization or its representa-
32 tive shall not sell, solicit or negotiate insurance unless licensed as an in-
33 surance agent, insurance broker or insurance producer pursuant to K.S.A.
34 2006 Supp. 40-4901 et seq., and amendments thereto.

35 (b) A PEO registered pursuant to this act is not engaged in the sale
36 of insurance or in acting as a third party administrator by offering, mar-
37 keting, selling, administering or providing professional employer services
38 which include services and the sponsorship of employee benefit plans for
39 covered employees.

40 Sec. 15. (a) A client and a PEO shall each be deemed an employer
41 for purposes of sponsoring retirement and welfare benefit plans for its
42 covered employees.

43 (b) A professional employer agreement may require the participation

1 of a client in a plan of workers' compensation coverage provided by a
2 professional employer organization for the covered employees, however,
3 nothing in this act shall require the participation of a client in any retire-
4 ment or welfare benefit plan sponsored by a PEO for the benefit of
5 covered employees.

6 (c) A fully-insured welfare benefit plan offered to the covered em-
7 ployees of a single PEO shall be considered a single employer welfare
8 benefit plan and shall not be considered a multiple employer welfare
9 arrangement, or "MEWA", as defined in section 514 of the employee
10 retirement income security act of 1974, as amended, and shall be exempt
11 from the licensing requirements contained at K.S.A. 40-201 et seq., and
12 amendments thereto.

13 (d) For purposes of K.S.A. 40-2209 et seq., and amendments thereto,
14 a PEO shall be considered the employer of all of its covered employees
15 and all covered employees of one or more clients participating in a health
16 benefit plan sponsored by a single PEO shall be considered employees
17 of the PEO.

18 (e) If a PEO offers to its covered employees any health benefit plan
19 which is not fully-insured by an insurer authorized to do business in this
20 state, the plan shall:

21 (1) Utilize a third-party administrator authorized to do business in
22 this state;

23 (2) hold all plan assets, including participant contributions, in a trust
24 account;

25 (3) provide sound reserves for the plan as determined using generally
26 accepted actuarial standards; and

27 (4) provide written notice to each covered employee participating in
28 the benefit plan that the plan is self-insured or is not fully-insured.

29 Sec. 16. (a) The responsibility to obtain workers' compensation cov-
30 erage for covered employees from an insurer licensed to do business in
31 this state pursuant to K.S.A. 40-201 et seq., and amendments thereto,
32 and in compliance with all applicable law shall be specifically allocated in
33 the professional employer agreement to either the client or the PEO.

34 (b) Nothing in this act shall require the participation of a client in
35 any plan of workers' compensation coverage provided by a professional
36 employer organization for the benefit of covered employees, if the client
37 has obtained workers' compensation coverage for the covered employees
38 and employees of the client who are not covered employees subject to a
39 professional employer agreement on a direct purchase basis from an in-
40 surer licensed to do business in this state pursuant to K.S.A. 40-201 et
41 seq., and amendments thereto.

42 (c) If a PEO holds a license issued pursuant to K.S.A. 2006 Supp. 40-
43 4901 et seq., and amendments thereto, and the PEO is authorized by an

1 insurer licensed to do business in this state, the PEO may negotiate cov-
2 erage, collect premiums on behalf of the insurer, and otherwise act as an
3 intermediary with respect to direct purchase coverage as permitted by
4 law.

5 (d) Nothing in this section shall abrogate the responsibility of the
6 client to obtain workers' compensation coverage for all employees who
7 are not covered employees pursuant to a professional employer
8 agreement.

9 (e) If covered employees are covered by a workers' compensation
10 policy purchased by a client on a direct purchase basis, and are not cov-
11 ered by a workers' compensation policy issued in the name of the PEO,
12 the client shall provide a certificate of insurance to the PEO evidencing
13 that workers' compensation coverage has been obtained for covered em-
14 ployees by the client.

15 (f) The requirements contained in subsection (a) of this section shall
16 be fulfilled in one of the following ways:

17 (1) The client obtains workers' compensation coverage on a direct
18 purchase basis pursuant to K.S.A. 44-501 et seq., and amendments
19 thereto, covering all of the client's covered employees and direct hire
20 employees, subject to the same requirements and conditions as if the
21 client were the sole employer of its PEO co-employees;

22 (2) the PEO purchases a separate workers' compensation policy, is-
23 sued pursuant to K.S.A. 44-501 et seq., and amendments thereto, from
24 an insurer holding a certificate of authority to do business in this state
25 providing workers' compensation coverage for the covered employees of
26 each client on a multiple coordinated policy basis listing the PEO as "labor
27 contractor for" each client or group of affiliated clients;

28 (3) the PEO purchases workers' compensation insurance coverage
29 pursuant to K.S.A. 44-501 et seq., and amendments thereto, for covered
30 employees of one or more clients from an insurer holding a certificate of
31 authority to do business in this state on a master policy basis and the
32 insurer issues a certificate of coverage providing workers compensation
33 insurance coverage for the client; or

34 (4) the PEO obtains authorization from the department of insurance
35 to self-insure its workers' compensation obligations pursuant to K.S.A.
36 44-532 et seq., and amendments thereto, and provides workers' compen-
37 sation coverage under such self-insurance in compliance with department
38 of insurance regulations.

39 (g) (1) The premium for any insurance policy issued to a PEO or a
40 client pursuant to subsection (b) that provides workers' compensation
41 coverage for covered employees shall be developed using the exposure
42 and experience of the client or clients for which the policy is being issued.

43 (2) The insurer of a PEO may take all reasonable steps to ascertain

- 1 exposure under the policy through the following procedures:
- 2 (A) Complete description of PEO's operations and the client's
3 operations;
- 4 (B) periodic reporting of payroll, classifications, experience rating
5 modification factors and jurisdictions with exposure by covered client;
- 6 (C) audit of PEO's operations and client or clients' operations; and
7 (D) any other reasonable measure to determine the appropriate
8 premium.
- 9 (h) The PEO shall provide any information requested by the depart-
10 ment or the department of insurance relating to its contractual provisions
11 for inception and termination of PEO agreements with clients, the meth-
12 ods by which its workers' compensation costs are determined and allo-
13 cated and any other information relevant to the PEO's workers' compen-
14 sation coverage arrangements.
- 15 (i) All records, reports and other information obtained from a PEO
16 under this subsection, except to the extent necessary for the proper ad-
17 ministration of this act by the department of insurance shall be confiden-
18 tial and shall not be published or open to public inspection other than to
19 public employees in the performance of their public duties.
- 20 (j) (1) All loss reporting for injuries to covered employees and all
21 payroll reporting for covered employees shall be conducted in a manner
22 that identifies both the PEO and the client and enables the calculation
23 of experience modification factors for the individual clients of a PEO upon
24 the termination of the professional employer agreement; and
- 25 (2) the experience modification factor for the client shall be based on
26 the experience of both covered employees and employees who are direct
27 hire employees of the client during the experience period.
- 28 (k) The Kansas workers' compensation insurance plan shall issue
29 workers' compensation policies for the covered employees of a PEO on
30 a multiple coordinated policy basis listing the PEO as the first named
31 insured.
- 32 (l) Both the client and the PEO shall be considered the employer for
33 the purpose of coverage under the workers' compensation act. The pro-
34 tection of the exclusive remedy provision of K.S.A. 44-501, and amend-
35 ments thereto, shall apply to the PEO, the client and to all covered em-
36 ployees and other employees of the client irrespective of which
37 co-employer obtains such workers' compensation coverage.
- 38 Sec. 17. (a) For the purposes of K.S.A. 44-701 et seq., and amend-
39 ments thereto, covered employees of a registered PEO are considered
40 the employees of the PEO, which shall be responsible for the payment
41 of contributions, penalties and interest on wages paid by the PEO to its
42 covered employees during the term of the applicable professional em-
43 ployer agreement, except that an individual proprietor, partner or cor-

1 porate officer, who is a shareholder or member of the board of directors
2 of the client company, shall not be considered a covered employee of the
3 PEO.

4 (b) A professional employer organization shall be liable for contri-
5 butions on wages paid by the professional employer organization to cov-
6 ered employees.

7 (c) The professional employer organization shall keep separate re-
8 cords and submit separate quarterly contributions and wage reports for
9 each client company.

10 (d) The PEO shall report and pay all required contributions for cov-
11 ered employees to the unemployment compensation fund using the state
12 employer account number and the contribution rate of the PEO.

13 (e) On the termination of a contract between a PEO and a client
14 company or the failure by a PEO to submit reports or make tax payments
15 as required by K.S.A. 44-701 et seq., and amendments thereto, the client
16 shall be treated as a new employer without a previous experience record
17 unless that client is otherwise eligible for an experience rating.

18 (f) The provisions of this section shall not be applicable to temporary
19 help services which provide temporary workers to employers on a tem-
20 porary help basis, provided the temporary help services agencies are liable
21 as employers for the payment of contributions on wages paid to temporary
22 workers so employed.

23 (g) This section shall be construed as part of the employment security
24 law.

25 Sec. 18. The following shall not be deemed to be professional em-
26 ployer organizations or the providing of professional employment services
27 for purposes of this act:

28 (a) Arrangements wherein a person, whose principal business activity
29 is not entering into professional employer arrangements and which does
30 not hold itself out as a PEO, shares employees with a commonly owned
31 company within the meaning of section 414(b) and (c) of the internal
32 revenue code of 1986, as amended;

33 (b) independent contractor arrangements by which a person assumes
34 responsibility for the product produced or service performed by the per-
35 son or agents of such persons and retains and exercises primary direction
36 and control over the work performed by the individuals whose services
37 are supplied under the arrangements; or

38 (c) persons providing temporary help services.

39 Sec. 19. (a) It shall be the duty of the department when informed of
40 any violation of section 4 of this act, to investigate the allegation of the
41 complaint.

42 (b) The secretary may after notice and an opportunity for a hearing
43 pursuant to the Kansas administrative procedure act, refuse to renew or

1 may suspend or revoke a professional employer organization's license, or
2 may place the licensee on probation for a period not to exceed one year,
3 or may impose an administrative penalty in an amount not to exceed
4 \$1,000 for each material violation of this act, and may issue a cease and
5 desist order if it is found after a hearing that:

6 (1) The professional employer organization has knowingly provided
7 false or fraudulent information, or has knowingly made a material mis-
8 representation to the department, or other governmental agency in con-
9 junction with any license, renewal, or in any report required under this
10 act;

11 (2) the professional employer organization or a controlling person of
12 a PEO has been convicted of a crime that relates to the operation of a
13 PEO, relates to fraud or deceit, or the ability of the licensee or a con-
14 trolling person of a licensee to operate a PEO; or

15 (3) the professional employer organization has committed a willful
16 violation of this act or any order or rule and regulation issued by the
17 department under this act.

18 Sec. 20. The secretary may adopt, amend and revoke rules and reg-
19 ulations governing the administration and enforcement of this act.

20 Sec. 21. If any provision of this act or the application thereof to any
21 person or circumstance is held invalid, the invalidity does not affect other
22 provisions or applications of this act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are severable.

25 Sec. 22. This act shall take effect and be in force from and after its
26 publication in the Kansas register.