

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

# A Bill

HOUSE BILL 2223

5 By: Representative R. Smith  
6  
7

## For An Act To Be Entitled

9 AN ACT TO REGULATE PROFESSIONAL EMPLOYER  
10 ORGANIZATIONS; TO PROVIDE CERTAIN EXEMPTIONS FROM  
11 REGISTRATION REQUIREMENTS FOR THESE  
12 ORGANIZATIONS; TO REQUIRE A PROFESSIONAL EMPLOYEE  
13 ASSOCIATION TO MAINTAIN CERTAIN FINANCIAL  
14 STANDARDS FOR THESE ORGANIZATIONS; TO DESIGNATE  
15 CERTAIN RECORDS AS CONFIDENTIAL FOR  
16 CONFIDENTIALITY; TO ALLOCATE RIGHTS, DUTIES AND  
17 OBLIGATIONS UNDER PROFESSIONAL EMPLOYER  
18 AGREEMENTS; TO REQUIRE WORKERS' COMPENSATION  
19 COVERAGE; AND FOR OTHER PURPOSES.  
20

## Subtitle

21 AN ACT TO REGULATE PROFESSIONAL EMPLOYER  
22 ORGANIZATIONS.  
23  
24  
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

28 SECTION 1. Arkansas Code, Title 23, Chapter 92, is amended to add a  
29 new subchapter to read as follows:

30 23-92-401. Title.

31 This subchapter may be cited as the "Arkansas Professional Employer  
32 Organization Recognition and Licensing Act".  
33

34 23-92-402. Definitions.

35 For purposes of this subchapter:

36 (a) "Client" means any person who enters into a coemployment



1 relationship as a coemployer with a professional employer organization;

2 (b) "Coemployer" means a professional employer organization or a  
3 client of a professional employer organization;

4 (c) "Coemployment relationship" means:

5 (1) As between coemployers, a relationship in which the rights,  
6 duties, and obligations of an employer that arise out of an employment  
7 relationship have been allocated between coemployers under a professional  
8 employer agreement and this subchapter, and that is intended to be an ongoing  
9 relationship, rather than a temporary or project specific relationship;

10 (2) As between each professional employer organization and a  
11 covered employee to which a professional employer agreement applies, an  
12 employment relationship in which:

13 (A) The professional employer organization is entitled to  
14 enforce the rights, and is obligated to perform the duties and obligations  
15 allocated to the organization by the professional employer agreement and this  
16 subchapter; and

17 (B) A covered employee is entitled to enforce against the  
18 professional employer organization the duties and obligations allocated to  
19 the organization by the professional employer agreement and this subchapter;

20 (3) As between each client and a covered employee to which a  
21 professional employer agreement applies, an employment relationship in which:

22 (A) Each client is entitled to enforce the rights  
23 allocated to the client by the agreement and this subchapter and is obligated  
24 to provide and perform the employer obligations allocated to the client by  
25 the professional employer agreement and this subchapter and in which the  
26 client is responsible for any employer right or obligation not otherwise  
27 allocated by the professional employer agreement or this subchapter; and

28 (B) Each covered employee is entitled to enforce against  
29 the client the duties and obligations allocated to the client by the  
30 professional employer agreement and this subchapter and any other duties and  
31 obligations of an employer not otherwise allocated by the professional  
32 employer agreement or this subchapter;

33 (d) "Commissioner" means the Insurance Commissioner;

34 (e) "Controlling person" means:

35 (1) Any natural person who directly or indirectly possesses the  
36 power to direct or cause the direction of the management or policies of any

1 professional employer organization, including:

2 (A) Direct or indirect control of ten percent (10%) or  
 3 more of an ownership interest bearing the right to participate in policy  
 4 making for the professional employer organization; or

5 (B) The general power to endorse any negotiable instrument  
 6 payable to or on behalf of the professional employer organization or to cause  
 7 the direction of the management or policies of any professional employee  
 8 organization; and

9 (2) Any natural person employed, appointed, or authorized by a  
 10 professional employer organization to enter into a contractual relationship  
 11 with a client company on behalf of the organization;

12 (f)(1) "Covered employee" means an individual having a coemployment  
 13 relationship with a professional employer organization and a client who has  
 14 entered into a professional employer agreement with respect to the employee.

15 (2) "Covered employee" includes the client's officers,  
 16 directors, shareholders, partners, and managers to the extent that those  
 17 persons act as operational managers or perform services for the client;

18 (g) "Department" means State Insurance Department;

19 (h) "Licensee" means a professional employer organization licensed  
 20 under this subchapter;

21 (i) "Person" means any individual, partnership, corporation, limited  
 22 liability company, association, or any legally recognized entity, however  
 23 formed;

24 (j) "Professional employer agreement" means a written contract by and  
 25 between a client and a professional employer organization under which the  
 26 organization and the client agree to establish a coemployment relationship  
 27 and which satisfies the requirements of § 23-92-409(c).

28 (k) "Professional employer organization" means any person engaged in  
 29 the business of providing professional employer services.

30 (l)(1) "Professional employer organization group" means two (2) or  
 31 more affiliated professional employer organizations.

32 (2) Two (2) or more professional employer organizations are  
 33 affiliated if they have common owners having ownership interests in them of  
 34 greater than fifty percent (50%);

35 (m)(1) "Professional employer services" means an arrangement, under  
 36 contract or otherwise, in which the professional employer organization

1 assigns employees to perform services for a recipient or client, whereby:

2 (A) The arrangement is intended to be, or is, ongoing  
 3 rather than temporary in nature; and

4 (B) Employer responsibilities, including the right of  
 5 direction and control of the employees, are shared by the professional  
 6 employer organization and the recipient.

7 (2) “Professional employer services” does not include services  
 8 performed by temporary employees or by persons determined to be independent  
 9 contractors with respect to the recipient;

10 (n)(1) “Temporary help services” means a service in which a person  
 11 hires workers and assigns them to a person for a temporary time period or  
 12 nonpermanent basis to support or supplement the other person’s workforce in  
 13 special work situations such as employee absences, temporary skill shortages,  
 14 seasonal workloads, and special assignments and projects.

15 (2) “Temporary help services” shall not be deemed professional  
 16 employer services;

17 (o) “Professional employer organization service organization” means an  
 18 organization licensed under § 23-92-415;

19 (p) “Professional employer organization service organization  
 20 affidavit” means an attestation or certification of a professional employer  
 21 organization service organization and any additional information that  
 22 conforms to the requirements in the rules and regulations as promulgated by  
 23 the commissioner.

24 (q)(1) “Transacting insurance” includes any of the following actions  
 25 by a professional employer organization or its representatives:

26 (A) Soliciting prospective clients based solely or  
 27 primarily on representation of insurance cost advantages;

28 (B) Advising a prospective client regarding insurance  
 29 coverage; or

30 (C) Offering for sale or selling a policy of insurance to  
 31 a client or employee.

32 (2) For the purposes of this subchapter, “transacting insurance”  
 33 does not include any of the following actions by a professional employer  
 34 organization or its representatives:

35 (A) Soliciting prospective clients to enter into a  
 36 professional employee agreement;

1           (B) Collecting information from a prospective client  
2 related to payroll, employee benefits, employment policies, workplace safety,  
3 and other employer responsibilities and operational experience;

4           (C) Evaluating collected information to ascertain the  
5 professional employer organization's risk and cost associated with serving a  
6 prospective client's workforce;

7           (D) Informing a prospective client of the terms and  
8 conditions under which the professional employer organization will enter into  
9 a professional employer agreement; or

10           (E) Performing employer responsibilities as required by  
11 this subchapter.

12  
13       23-92-403. Relationship to other laws.

14       (a)(1) Neither this subchapter nor any professional employer agreement  
15 shall affect, modify or amend any collective bargaining agreement, or the  
16 rights or obligations of any client, professional employer organization, or  
17 covered employee under the National Labor Relations Act, as it existed on  
18 January 1, 2003.

19       (2) This subchapter preserves all rights to which a covered  
20 employee would be entitled to under a traditional employment relationship.

21       (b) Neither this subchapter nor any professional employer agreement  
22 shall affect, modify, or amend any state, local, or federal licensing,  
23 registration, or certification requirement applicable to any client or  
24 covered employee.

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

28       (d) A professional employer organization shall not be deemed to engage  
29 in any occupation, trade, profession, or other activity that is subject to  
30 licensing, registration, or certification requirements, or is otherwise  
31 regulated by a governmental entity, solely by entering into and maintaining a  
32 coemployment relationship with a covered employee who is subject to this  
33 subchapter or to regulations promulgated under this subchapter.

34       (e)(1) For purposes of determination of tax credits and other economic  
35 incentives provided by Arkansas that are based on employment, covered  
36 employees are deemed employees solely of the client.

1           (2) A client is entitled to the benefit of any tax credit,  
 2 economic incentive, or other benefit arising as the result of the employment  
 3 of covered employees of the client.

4           (3) Upon request by a client, each professional employer  
 5 organization shall provide employment information reasonably required by an  
 6 Arkansas agency or department that is necessary to support any request,  
 7 claim, application, or other action by a client seeking any tax credit or  
 8 economic incentive under subdivision (e)(2) of this section.

9           (f)(1) Applicants for licensing or a professional employer  
 10 organization licensed under this subchapter authorize the Arkansas Employment  
 11 Security Department and the Workers' Compensation Commission, or their  
 12 successors, to release confidential information concerning the applicant or  
 13 professional employer organization upon the written request of the Employment  
 14 Security Division or the commissioner.

15           (2) The Arkansas Employment Security Department and the Workers'  
 16 Compensation Commission shall maintain the confidentiality of information  
 17 received under subdivision (f)(1) of this section unless the information is  
 18 introduced into evidence at an administrative proceeding or at a civil or  
 19 criminal trial arising out of a violation of this subchapter that involves  
 20 the applicant, the professional employer organization, or the controlling  
 21 person.

22  
 23           23-92-404. Licensing and renewal.

24           (a) Except as otherwise provided in this subchapter, no person shall,  
 25 provide, advertise, or otherwise hold itself out as providing professional  
 26 employer services in Arkansas, unless the person is licensed as a  
 27 professional service organization under this subchapter.

28           (b)(1) Each professional employer organization required to be licensed  
 29 under this subchapter shall provide the Insurance Commissioner information  
 30 required by the commissioner on forms prescribed by the commissioner.

31           (2) The information required under subdivision (b)(1) of this  
 32 section shall include the following information:

33                   (A) The legal name of the professional employer  
 34 organization and all other names under which the professional employer  
 35 organization conducts business;

36                   (B) The address of the principal place of business of the

1 professional employer organization and the address of each office it  
 2 maintains in Arkansas;

3 (C) The professional employer organization's taxpayer or  
 4 employer identification number;

5 (D) A list by jurisdiction of each name under which the  
 6 professional employer organization has operated in the preceding five (5)  
 7 years, including any fictitious names, alternative names, names of  
 8 predecessors and, if known, successor business entities;

9 (E) A statement of ownership, which shall include the name  
 10 and evidence of the business experience of all controlling persons;

11 (F) A statement of each controlling person disclosing any  
 12 interest in any other professional employer organization, whether licensed or  
 13 not in Arkansas, in which the controlling person has a ten percent (10%) or  
 14 greater interest;

15 (G) A statement of management, which shall include the  
 16 name and evidence of the business experience of any person who serves as  
 17 president or chief executive officer, or otherwise has the authority to act  
 18 as senior executive officer of the professional employer organization; and

19 (H)(i) A financial statement setting forth the financial  
 20 condition of the professional employer organization, as of a date not earlier  
 21 than one hundred eighty (180) days before the date the financial statement is  
 22 submitted to the commissioner.

23 (ii) The financial statement under subdivision  
 24 (b)(1)(H)(i) of this section shall be prepared in accordance with generally  
 25 accepted accounting principles, and shall be audited by an independent  
 26 certified public accountant licensed to practice in Arkansas or the state of  
 27 domicile of the professional employer organization.

28 (iii) A professional employer organization group may  
 29 submit combined or consolidated audited or reviewed financial statements to  
 30 meet the requirements of this section.

31 (c)(1) Each professional employer organization operating within this  
 32 state as of the effective date of this subchapter, shall complete its initial  
 33 licensing no later than December 31, 2003.

34 (2) Each professional employer organization not operating within  
 35 Arkansas as of the effective date of this subchapter, shall complete its  
 36 initial licensing before beginning operations within this state.

1           (d)(1) No later than the biennial anniversary date of its licensing,  
2 each licensee shall renew its licensing by notifying the commissioner of any  
3 changes in the information provided in the licensee's most recent licensing  
4 or renewal and by paying a renewal fee.

5           (2) If a licensee under this subchapter fails to renew its  
6 license at the time of renewal and pay the renewal fee, its license shall  
7 become delinquent.

8           (3)(A) Licensees under this subchapter shall have thirty (30)  
9 days after the renewal date in which to renew their licenses and pay in  
10 addition to the renewal fee under subdivision (d)(1) of this section, a late  
11 fee not to exceed one thousand dollars (\$1,000).

12           (B) If payment is not received within the thirty-day time  
13 period under subdivision (d)(3)(A) of this section:

14                   (i) The license shall automatically become void  
15 without further action by the commissioner; and

16                   (ii)(a) The commissioner shall enter a temporary  
17 order compelling the professional employer organization to cease and desist  
18 from any professional employer services in the Arkansas.

19                   (b) The order under subdivision  
20 (d)(3)(ii)(a) of this section shall provide for an opportunity for the  
21 professional employer organization to request a hearing.

22                   (c) If the professional employer  
23 organization does not request a hearing within thirty (30) days after the  
24 entry of the order or if the commissioner finds after a hearing that the  
25 professional employer organization's license should not be renewed, the order  
26 entered under subdivision (d)(3)(ii)(a) of this section shall become  
27 permanent.

28                   (d) The commissioner shall provide a  
29 copy of the order entered under subdivision (d)(3)(ii)(a) of this section to  
30 the Workers' Compensation Commission and the Arkansas Employment Security  
31 Department, or their successors.

32           (e)(1) A professional employer organization group may satisfy any  
33 reporting and financial requirements of this subchapter on a consolidated  
34 basis.

35           (2) As a condition of licensing as a professional employer  
36 organization group, each affiliate of the group shall guarantee payment of



1 all financial obligations with respect to wages, employment taxes, and  
 2 employee benefits of each affiliate of the group.

3 (f)(1) A professional employer organization is exempt from the  
 4 licensing requirements contained in §§ 23-92-304(a) through (e), 23-92-305,  
 5 23-92-306, and 23-92-308 if the professional employer organization:

6 (A) Submits a properly executed request for exemption on a  
 7 form provided by the State Insurance Department;

8 (B) Is domiciled outside of Arkansas and is licensed or  
 9 registered as a professional employer organization in another state that has  
 10 the same or greater requirements than this subchapter;

11 (C) Does not maintain an office in this state or solicit  
 12 in any manner clients located or domiciled within this state; and

13 (D) Has one hundred (100) or fewer covered employees  
 14 employed or domiciled in Arkansas.

15 (2) A professional employer organization’s exemption from the  
 16 licensing requirements under this subchapter shall be valid for two (2)  
 17 years, subject to renewal, for as long as the professional employer  
 18 organization continues to qualify for the exemption and, on or before the  
 19 biennial anniversary date of the original grant of exemption, requests the  
 20 exemption to continue.

21 (g) The commissioner shall maintain a list of professional employer  
 22 organization s licensed or exempted under this subchapter.

23 (h) The commissioner may prescribe forms necessary to promote the  
 24 efficient administration of this section.

25 (i) The commissioner shall reject an application for a license, or for  
 26 an exemption from license if:

27 (1) The commissioner finds that any controlling person named in  
 28 the license or exemption application is not of good moral character, business  
 29 integrity, or financial responsibility; or

30 (2) The commissioner finds that the controlling person has  
 31 violated a provision of this subchapter.

32 (j) A person engaged in the business of providing professional  
 33 employer services shall be subject to licensing under this subchapter  
 34 regardless of its use of the name “professional employer organization”,  
 35 “PEO”, “staff leasing company”, “licensed staff leasing company”, “employee  
 36 leasing company”, or any other name.

1  
2 23-92-405. Controlling person.

3 (a) Each controlling person shall provide information and  
4 certifications necessary for the commissioner to determine that the person is  
5 of good moral character and:

6 (1) Is at least 18 years of age;

7 (2) Has the education, managerial, or business experience to  
8 successfully act as the controlling person of a professional employer  
9 organization;

10 (b)(1) As used in this subchapter, "good moral character" means a  
11 personal history of honesty, trustworthiness, fairness, a good reputation for  
12 fair dealings, and respect for the rights of others and for the state and  
13 federal laws.

14 (2) The commissioner may conduct a thorough background  
15 investigation of the individual's good moral character, as the commissioner  
16 may deem necessary.

17 (c) The commissioner may prohibit a person found to qualify as a  
18 controlling person under subdivision (a) of this section from exercising  
19 control over the professional employer organization if the commissioner  
20 subsequently finds that the person no longer qualifies under subsection (a)  
21 of this section.

22 (d) A controlling person may be removed or suspended from control for  
23 a definite period if:

24 (1) He or she is indicted as the subject of a criminal  
25 investigation, is found guilty of, pleads guilty or nolo contendere to:

26 (A) Bribery, fraud, or willful misrepresentation in  
27 obtaining, attempting to obtain, or renewing a license;

28 (B) A crime in any jurisdiction which relates to the  
29 operation of a professional employer organization business or the ability to  
30 engage in business as a professional employer organization;

31 (C) Fraud, deceit, or misconduct in the classification of  
32 employees for purposes of determining Workers' Compensation rates;

33 (D) Fraud, deceit, or misconduct in the establishment or  
34 maintenance of self-insurance, whether health insurance or Workers'  
35 Compensation insurance; or

36 (E) Fraud, deceit, or misconduct in the operation of a

1 professional employer organization;

2 (2) He or she is confined in any county jail, post adjudication,  
 3 or confined in any state or federal prison or mental institution;

4 (3) Due to mental disease or deterioration, he or she can no  
 5 longer safely be entrusted to deal with the public or in a confidential  
 6 capacity;

7 (4) He or she has been previously suspended and is found guilty  
 8 for a second time of any misconduct that warrants suspension;

9 (5) He or she has been previously suspended and is found guilty  
 10 of a course of conduct or practice that shows the licensee is so incompetent,  
 11 negligent, dishonest, or untruthful that the money, property, transactions,  
 12 and rights of investors, or those with whom the licensee may sustain a  
 13 confidential relationship, may not safely be entrusted to the licensee;

14 (6) He or she fails to inform the commissioner in writing within  
 15 thirty (30) days after being found guilty of, or entering a plea of guilty or  
 16 nolo contendere to any felony;

17 (7) He or she is determined liable for civil fraud by a court in  
 18 any jurisdiction; or

19 (8) He or she, by bribery, misrepresentation, or fraud, obtains  
 20 or attempts to obtain a new license, or renews or attempts to renew a license  
 21 to provide professional employer organization services.

22  
 23 23-92-406. Changes in control.

24 (a)(1) A license issued to any professional employer organization  
 25 under this subchapter may not be transferred or assigned.

26 (2) A licensee may not operate an entity subject to licensing  
 27 under this subchapter under any name or at any location other than that  
 28 specified in the application for the license, or without having received the  
 29 prior written consent of the Insurance Commissioner.

30 (3) The commissioner may adopt additional rules to provide for a  
 31 licensee's change of name or location.

32 (b)(1) A person or entity that seeks to purchase or acquire control of  
 33 an entity licensed under this subchapter shall first apply to the  
 34 commissioner for a certificate of approval for the proposed change of  
 35 ownership.

36 (2) The application under subdivision (b)(1) of this section

1 shall contain the name and address of the proposed new owner, controlling  
2 person, and any other information required by the commissioner.

3 (c)(1) Any existing stockholder or partner who intends to acquire  
4 control of an existing entity that is licensed under this subchapter shall  
5 first apply to the commissioner for a certificate of approval for the  
6 proposed change of ownership.

7 (2) The application shall contain the name and address of any  
8 stockholder or partner who owns ten percent (10%) or more of the entity and  
9 who seeks to acquire control, and any other information required by the  
10 commissioner.

11 (d)(1) Before recommending that a certificate of approval be issued to  
12 an applicant that has applied under subsection (a) or (b) of this section,  
13 the commissioner may conduct an investigation of the applicant and examine  
14 the records of the entity as part of the investigation in accordance with  
15 applicable law.

16 (2) As a part of his or her investigation, the commissioner  
17 shall determine if there are any complaints pending against the company being  
18 purchased, the controlling person proposed to operate the purchased entity,  
19 or the proposed controlling person's existing company.

20 (3) The commissioner shall issue a certificate of approval only  
21 after he or she has determined that the proposed new owner possesses the  
22 financial ability, experience, and integrity to operate the entity as  
23 required by this subchapter.

24 (e) The commissioner shall waive the requirements of subsection (d) of  
25 this section and shall automatically approve the proposed change in ownership  
26 if:

27 (1) The application meets the requirements of subsection (b) or  
28 (c) of this section;

29 (2) The proposed new owner and the current owner are part of the  
30 same controlled entity; and

31 (3) No member or controlling person of the controlled entity is  
32 under investigation or has been previously denied a license by the  
33 commissioner.

34 (f) Any application that is submitted to the commissioner under this  
35 section shall be deemed approved if the commissioner has not approved or  
36 rejected the application and provided the applicant with the basis for a

1 rejection, within ninety (90) days after the receipt of the completed  
2 application.

3  
4 23-92-407. Fees.

5 (a) Upon filing an initial licensing statement under this subchapter,  
6 a professional employer organization shall pay an initial licensing fee of one  
7 thousand dollars (\$1,000).

8 (b) Upon each biennial renewal of a licensing statement filed under  
9 this subchapter, a professional employer organization shall pay a renewal fee  
10 of one thousand dollars (\$1,000).

11 (c) Each professional employer organization exempt from licensing  
12 under the terms of this subsection shall pay an exemption fee in the amount  
13 of fifty dollars (\$50.00) upon initial application for exemption and upon  
14 each biennial renewal of the exemption.

15 (d) Upon the filing of each request for a change in ownership or  
16 controlling person filed under this subchapter, a professional employer  
17 organization shall pay a change in ownership fee of five hundred dollars  
18 (\$500).

19 (e) By regulation, the Insurance Commissioner may increase, decrease,  
20 or eliminate any fee provided for in this section but no fee provided for in  
21 this section shall ever exceed five thousand dollars (\$5,000).

22  
23 23-92-408. Financial assurance required.

24 (a) Each professional employer organization shall maintain:

25 (1) An audited minimum net worth of at least one hundred  
26 thousand dollars (\$100,000), as reflected in the financial statements  
27 submitted to the Insurance Commissioner with the initial licensing, and  
28 annually thereafter; or

29 (2)(A) A bond in the amount of at least one hundred thousand  
30 dollars (\$100,000).

31 (B) The terms and conditions of the bond shall be approved  
32 by the commissioner.

33 (C) The bond shall be conditioned so that the licensee and  
34 each member, employee, shareholder, or officer of a person, firm,  
35 partnership, corporation, or association operating as an agent of the  
36 licensee shall not:

1 (i) Violate the provisions of this subchapter or  
 2 violate rules, regulations, or orders lawfully promulgated by the  
 3 commissioner under this subchapter; or

4 (ii) Fail to pay any wages due under any contract  
 5 made by the licensee in the conduct of its business subject to this  
 6 subchapter.

7 (D) The bond required by this section shall be a surety  
 8 bond issued by a corporate surety or insurer authorized to do business in  
 9 Arkansas.

10 (E) In lieu of a bond, the professional employer  
 11 organization may deposit either:

12 (i) Securities with a minimum market value of at  
 13 least one hundred thousand dollars (\$100,000) with an approved depository  
 14 under an approved depository agreement under § 23-69-134(b)(4); or

15 (ii) An irrevocable letter of credit in a face  
 16 amount of not less than one hundred thousand dollars (\$100,000) in a form  
 17 that is acceptable to the commissioner;

18 (F) The bond, deposited securities, or letter of credit  
 19 shall secure payment by the professional employer organization of all taxes,  
 20 wages, benefits, or other entitlement due to or with respect to a covered  
 21 employee, if the professional employer organization does not make the  
 22 payments when due; and

23 (G) Any securities deposited under this subsection (a) may  
 24 be included for the purpose of calculation of the minimum net worth required  
 25 by this subsection (a).

26 (b)(1) A professional employer organization shall submit to the  
 27 commissioner, within forty-five (45) days after the end of each calendar  
 28 quarter, a statement by an independent certified public accountant that all  
 29 applicable state payroll taxes for covered employees located in this state  
 30 have been paid on a timely basis for that quarter.

31 (2) The statement shall either be in the form of an examination  
 32 level attestation or shall be based upon agreed upon procedures acceptable to  
 33 the commissioner.

34 (3) The commissioner shall by rule issue requirements for  
 35 procedures referred to in subdivision (b)(2).

36 (c)(1) If any person is aggrieved by the misconduct of any licensee,

1 that person may maintain an action in his or her own name upon the bond or  
 2 assets of the professional employer organization in any court of competent  
 3 jurisdiction in this state.

4 (2) All claims shall be assignable, and the assignee shall be  
 5 entitled to the same remedies upon the bond of the licensee as the aggrieved  
 6 person would have been entitled if the claim had not been assigned.

7 (3) Any assignable claim under subdivision (c)(2) of this  
 8 seciton may be enforced in the name of the assignee.

9 (4) Any remedy provided by this section is in addition to any  
 10 other remedy which otherwise exists.

11 (d) An action on the bond or other security required by this section  
 12 may be maintained by the commissioner in the name of the State of Arkansas in  
 13 any court of competent jurisdiction in this state, for the benefit of any  
 14 person or persons aggrieved by the misconduct of the licensee.

15 (e)(1) If any licensee fails to file a new bond with the commissioner  
 16 within thirty (30) days after notice of cancellation by the surety of the  
 17 bond required by this section, the license issued to the licensee or the  
 18 principal under the bond shall be deemed suspended until a new surety bond is  
 19 filed with and approved by the commissioner.

20 (2) A person whose license is suspended under this section shall  
 21 not carry on the business of a professional employer organization during the  
 22 period of the suspension.

23  
 24 23-92-409. Relationships defined.

25 (a)(1) Except as specifically provided in this subchapter, the  
 26 coemployment relationship between the client and the professional employer  
 27 organization, and between each coemployer and each covered employee, shall be  
 28 governed by the professional employer agreement.

29 (2) Neither this subchapter nor any professional employer  
 30 agreement shall:

31 (A) Diminish, abolish or remove rights of covered  
 32 employees as to clients or obligations of clients as to a covered employee  
 33 that existed before the effective date of a professional employer agreement;

34 (B) Terminate an employment relationship existing before  
 35 the effective date of a professional employer agreement; or

36 (C) Create any new or additional enforcement right of a

1 covered employee against a professional employer organization not  
2 specifically allocated to the professional employer organization in the  
3 professional employer agreement or under this subchapter.

4 (b) Except as specifically provided in this subchapter or in the  
5 professional employer agreement, in each coemployment relationship:

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

9 (2)(A) The professional employer organization shall be entitled  
10 to exercise only the rights, and obligated to perform only the duties and  
11 responsibilities, specifically required by this subchapter or by the  
12 professional employer agreement.

13 (B) The rights, duties, and obligations of the  
14 professional employer organization as coemployer with respect to any covered  
15 employee is limited to those rights during, and obligations arising under the  
16 professional employer agreement and this subchapter during the term of  
17 coemployment by the professional employer organization of the covered  
18 employee.

19 (c) Each professional employer agreement shall include, at a minimum,  
20 the following:

21 (1)(A) The professional employer organization shall reserve a  
22 right of direction and control over the covered employees;

23 (B) However, the client may retain the right to exercise  
24 direction and control over covered employees as is necessary to conduct the  
25 client's business, to discharge any fiduciary responsibility which it may  
26 have, or to comply with any applicable licensing requirements;

27 (2)(A) The professional employer organization shall:

28 (B) Pay wages and salaries to covered employees;

29 (C) Withhold, collect, report, and remit payroll-related  
30 and employment taxes; and

31 (D) To the extent the professional employer organization  
32 has assumed responsibility in the professional employer agreement, make  
33 payments for employee benefits for covered employees;

34 (3) The professional employer organization and the client shall  
35 retain authority to hire, terminate, and discipline the covered employees;  
36 and



1           (4)(A) The responsibility to obtain Workers' Compensation  
2 coverage for covered employees, from a carrier licensed to do business in  
3 Arkansas, and otherwise in compliance with all applicable requirements, shall  
4 be specifically allocated to either the client or the professional employer  
5 organization.

6           (B)(1) If the responsibility under subdivision (C)(4)(A)  
7 of this section is allocated to the professional employer organization under  
8 a professional employer agreement, the agreement shall require the  
9 professional employer organization to maintain records regarding the premium  
10 and loss experience related to Workers' Compensation insurance provided to  
11 covered employees under the agreement.

12           (2) The professional employer agreement shall also  
13 provide that, if requested by the client at or after the termination of the  
14 agreement, the professional employer organization shall provide the records  
15 maintained under subdivision (c)(4)(1) to the client.

16           (C) If the professional employer organization or any of  
17 its controlling persons cannot provide the information requested under  
18 subdivision (c)(4)(2) of this section, any insurance carrier that provided  
19 the coverage for the covered employees shall provide it upon request of the  
20 client or the commissioner.

21           (5)(A) Upon request, during the period the client is a party to  
22 a professional employer organization arrangement, and for a period of ninety  
23 (90) days after termination of a professional employer organization  
24 arrangement, a client or former client is entitled to receive records of the  
25 professional employer organization regarding payroll, Workers' Compensation  
26 coverage, losses and claims, and employee benefits provided under the  
27 professional employer organization arrangement.

28           (B)(i) The professional employer organization may charge a  
29 reasonable fee for the cost of reproducing the information under subdivision  
30 (c)(5)(A) of this section.

31           (ii) This section does not require the disclosure of  
32 information to a client or former client concerning another client or former  
33 client of the professional employer organization.

34           (C) Either the professional employer organization or the  
35 controlling person, to the extent the person has access to the information,  
36 shall furnish the information requested within thirty (30) days of receiving

1 the request.

2 (d) With respect to each professional employer agreement entered into  
3 by a professional employer organization, each professional employer  
4 organization shall provide written notice to each covered employee affected  
5 by the agreement of the general nature of the coemployment relationship  
6 between and among the professional employer organization, the client, and any  
7 covered employee.

8 (e)(1) A professional employer organization shall provide to a client  
9 within fifteen (15) days of receipt of a written request, a record of wages  
10 by Workers' Compensation class code and claims loss runs for the lesser of  
11 the prior thirty six (36) calendar months, or the period of time the  
12 professional employer agreement between the client and professional employer  
13 organization has been effective.

14 (2) If a professional employer organization fails to provide the  
15 information in subdivision (e)(1) of this section, and if the commissioner  
16 requests no later than ninety (90) days after the termination of the policy  
17 covering the client, the insurer providing the coverage shall provide to the  
18 client within thirty (30) days the information, or as much information as the  
19 insurer possesses or should possess if the insurer has complied with  
20 applicable law.

21 (f)(1) A client and a professional employer organization shall each be  
22 deemed an employer for purposes of sponsoring retirement and welfare benefit  
23 plans for its covered employees.

24 (2) If limited to the employees of the professional employer  
25 organization, a welfare benefit plan offered to the covered employees of a  
26 single professional employer organization shall not be considered a multiple  
27 employer welfare arrangement or trust within the meaning of applicable law.

28 (3) For purposes of §§ 23-86-201 through 23-86-204 and §§ 23-86-  
29 207 through 23-86-209, with respect to a health benefit plan sponsored by a  
30 professional employer organization, a professional employer organization  
31 shall be considered the employer of all of its covered employees, and all  
32 covered employees of one (1) or more clients participating in a health  
33 benefit plan sponsored by a single professional employer organization shall  
34 be considered employees of the professional employer organization.

35 (4) If a professional employer organization offers to its  
36 covered employees any health benefit plan that is not fully insured by an

1 authorized insurer, the plan shall:

2 (A) Utilize a third-party administrator licensed to do  
3 business in this state;

4 (B) Hold all plan assets, including participant  
5 contributions, in a trust account; and

6 (C) Provide sound reserves for the plan as determined  
7 using generally accepted actuarial standards.

8 (g) Except to the extent otherwise provided in a professional employer  
9 agreement:

10 (1) A professional employer organization shall not be liable for  
11 the acts, errors, or omissions of a client, or of any covered employee when  
12 the covered employee is acting under the direction and control of a client;

13 (2) A client shall not be liable for the acts, errors, or  
14 omissions of a professional employer organization, or of any covered employee  
15 of the client and a professional employer organization when the covered  
16 employee is acting under the direction and control of the professional  
17 employer organization;

18 (3) This subsection does not limit any contractual liability or  
19 obligation specifically provided in a professional employer agreement, or the  
20 liabilities and obligations of any professional employer organization or  
21 client as defined elsewhere in this subchapter; and

22 (4) A covered employee is not, solely as the result of being a  
23 covered employee of a professional employer organization, an employee of the  
24 professional employer organization for purposes of general liability,  
25 insurance, fidelity bonds, surety bonds or, employer's liability that is not  
26 covered by Workers' Compensation carried by the professional employer  
27 organization, unless the covered employees are included by specific reference  
28 in the professional employer agreement and applicable prearranged employment  
29 contract, insurance contract, or bond.

30 (h) Except as provided under § 23-92-311, the sale of professional  
31 employer services provided by professional employer organizations licensed  
32 under this subchapter shall not constitute the sale of insurance for purposes  
33 of Arkansas insurance law.

34 (i) Covered employees whose services are subject to sales tax shall be  
35 deemed the employees of the client for purposes of collecting and levying  
36 sales tax on the services performed by the covered employee.

1           (j) A licensed professional employer organization shall be deemed an  
2 employer of the covered employees and shall perform the following employer  
3 responsibilities in conformity with all applicable federal and state laws and  
4 regulations to:

5           (1) Pay wages and collect, report, and pay employment taxes from  
6 its own accounts;

7           (2) Pay unemployment taxes as required by the Arkansas  
8 Employment Security Law, § 11-10-101 et seq.;

9           (3)(A) Ensure that all covered employees are covered by Workers'  
10 Compensation insurance provided in conformance with the laws of this state.

11           (B) Workers' Compensation coverage may be provided through  
12 a policy or plan maintained by either the professional employer organization  
13 or the client.

14           (C) However, for purposes of risks insured under the  
15 Arkansas Workers' Compensation Insurance Plan, § 23-67-301 et seq., the  
16 Insurance Commissioner is authorized to promulgate rules and regulations as  
17 he or she deems necessary to assure that Workers' Compensation coverage is  
18 available to employees providing services for a client;

19           (4) Be entitled and to entitle the client, together as joint  
20 employers, to the exclusive remedy under § 11-9-105, under both the Workers'  
21 Compensation and employer's liability provisions of a Workers' Compensation  
22 policy or plan that either party has secured within the meaning of § 11-9-  
23 105;

24           (5)(A) Not be vicariously liable for the liabilities of the  
25 client, whether contractual or otherwise;

26           (B) However, the client shall not be vicariously liable  
27 for the liabilities of the employee leasing firm, whether contractual or  
28 otherwise.

29           (C) This section shall limit any direct contractual  
30 liability or any joint liability between the client and the employee leasing  
31 firm.

32  
33           23-92-410. Issuance, refusal, suspension, or revocation of license -  
34 grounds and procedure.

35           (a) The Insurance Commissioner shall issue a license as a professional  
36 employer organization to any person who qualifies for the license under the

1 terms of this subchapter.

2 (b) In addition, the commissioner may refuse to issue a license to any  
3 person, or may suspend or revoke the license of any professional employer  
4 organization, or impose administrative fines as provided for in this  
5 subchapter when the commissioner finds:

6 (1) That the licensee or applicant has violated any of the  
7 provisions of this subchapter, the rules and regulations or other orders  
8 lawfully promulgated by the commissioner, or the conditions of financial  
9 assurances required by this subchapter;

10 (2) That the licensee or applicant has engaged in a fraudulent,  
11 deceptive, or dishonest practice; or

12 (3) For good and sufficient cause, finds that the licensee or  
13 applicant is unfit to be a professional employer organization within the  
14 meaning of this subchapter or of any of the rules and regulations or orders  
15 lawfully promulgated by the commissioner.

16 (c) The commissioner may not refuse to issue a license or suspend or  
17 revoke a license unless he or she furnishes the professional employer  
18 organization with a written statement of the charges against it and affords  
19 it an opportunity to be heard on the charges.

20  
21 23-92-411. Deceptive practices.

22 (a) No professional employer organization shall:

23 (1) Evade or attempt to evade the provisions of this subchapter  
24 by purporting to be the sole employer of the covered employees;

25 (2) Present a proposal to enter into a professional employer  
26 agreement with a prospective client unless the following notice is printed in  
27 not less than twelve (12) point bold type on the first page of the proposal:

28 “This proposal is intended to provide information about the general  
29 terms and conditions under which the above named firm will enter into an  
30 agreement to provide professional employer services. Information contained in  
31 this proposal does not constitute advice on legal, tax, or insurance matters.  
32 For advice on these matters, you should consult with the appropriate licensed  
33 professional.”;

34 (3) Enter into a professional employer agreement without a  
35 written provision signed by the client stating that the client is responsible  
36 for ensuring with the assistance of a licensed insurance producer that any

1 subcontractor of the client has Workers' Compensation coverage as required by  
2 law;

3 (4) Transact insurance, as defined under § 23-60-102, except  
4 through a licensed resident or nonresident insurance producer;

5 (5) Use the name or title "licensed employee leasing company",  
6 "employee leasing company", "employee leasing company group", "professional  
7 employer", "professional employer organization", "PEO", "controlling person",  
8 or words that would tend to lead one to believe that the person or entity is  
9 licensed under this subchapter, when the person or entity has not been  
10 licensed under this subchapter;

11 (6) Attempt to use a license that has been suspended, lapsed or  
12 revoked;

13 (7) Fail to maintain Workers' Compensation insurance as required  
14 by this subchapter;

15 (8) Conduct business without an active license;

16 (9) Transfer or attempt to transfer a license issued under this  
17 subchapter;

18 (10) Fail to conform to or violate any provision of this  
19 subchapter or any lawful order or rule issued under this subchapter;

20 (11) Fail to notify the commissioner, in writing, of any change  
21 of the primary business address or the addresses of any of the licensee's  
22 offices in the state;

23 (12) Have an adverse material final action taken by any state or  
24 federal regulatory agency for violations within the scope or control of the  
25 licensee;

26 (13) Fail to inform the commissioner in writing within thirty  
27 (30) days after any adverse material final action by a state or federal  
28 regulatory agency;

29 (14) Fail to meet or maintain the requirements for licensure as  
30 a professional employer organization; or

31 (15) Attempt to obtain or renew a license to provide  
32 professional employment services by bribery, misrepresentation, or fraud.

33 (b) The commissioner may prescribe, by regulation, additional acts or  
34 omissions that shall be deemed to constitute deceptive practices under this  
35 subchapter.

36

1           23-92-412. Penalties.

2           (a) Any person who engages in the business of a professional employer  
3 organization or acts as a professional employer organization without first  
4 procuring a license, or who otherwise violates any of the provisions under  
5 this subchapter shall be liable for a civil penalty of not less than two  
6 hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for  
7 each day that it engages in the business of providing professional employer  
8 services without a license.

9           (b)(1) Any person who violates any of the provisions under this  
10 subchapter or who violates any rules or regulations promulgated by the  
11 commissioner under this subchapter shall be liable for a civil penalty for  
12 each offense of not less than two hundred fifty dollars (\$250) nor more than  
13 five thousand dollars (\$5,000) for each violation.

14           (2) For any violation affecting two (2) or more employees  
15 covered by a professional employer organization agreement, the fine shall be  
16 multiplied by the number of employees affected by the violation.

17           (c) The Insurance Commissioner shall have the statutory power to  
18 enjoin or restrain by bringing an action in the Circuit Court of Pulaski  
19 County against any person who engages in the business of, or acts as a  
20 professional employer organization without having first procured a license  
21 for engaging in the business of a professional employer organization or  
22 acting as a professional employer organization.

23  
24           23-92-413. Nondisclosure of proprietary information.

25           (a)(1) Professional employer organizations and professional employer  
26 organization groups are required under this subchapter to file with the  
27 Insurance Commissioner certain proprietary material, including financial  
28 records and financial information and client lists, the disclosure of which  
29 would give advantage to competitors.

30           (2)(A) The commissioner shall not consider proprietary material  
31 under this subchapter to be subject to mandatory disclosure under § 25-19-105

32           (b)(9)(A).

33           (B) If litigation or any other proceedings are instituted  
34 to compel disclosure, the total expense of the proceedings shall be paid by  
35 the professional employer organization or professional employer organization  
36 group whose "proprietary" material is being sought.

1                   (C) The commissioner shall give notice in writing to any  
 2 professional employer organization or professional employer organization  
 3 group whose client lists or other material that the commissioner deems to be  
 4 “proprietary” are being sought under the Freedom of Information Act of 1967,  
 5 § 25-19-101 et seq.

6                   (b) Notwithstanding subsection (a) of this section or any other law  
 7 governing disclosure of confidential information, the commissioner, the  
 8 director of the Arkansas Employment Security Department, and the Workers’  
 9 Compensation Commission may exchange information among themselves for the  
 10 purposes of regulating professional employer organizations.

11  
 12                   23-92-414. Professional employer organization service organization  
 13 affidavit.

14                   (a) The commissioner may, by rule and regulation, provide for the  
 15 acceptance of a professional employer organization service organization  
 16 affidavit provided on behalf of a professional employer organization in lieu  
 17 of the requirements under §§ 23-92-304 through 23-92-206 and § 23-92-308, and  
 18 the fees provided for in § 23-92-307.

19                   (b) The fee for filing a professional employer organization service  
 20 organization affidavit shall be five hundred dollars (\$500) for initial  
 21 licensure and five hundred dollars (\$500) for each biennial renewal.

22  
 23                   23-92-415. Licensing of professional employer organization service  
 24 organizations.

25                   (a)(1) No professional employer service organization shall provide any  
 26 service relating to the regulation of professional employer organizations.

27                   (2) No state agency, professional employer organization, or  
 28 insurer shall use the services of a professional employee organization unless  
 29 the organization has obtained a license from the State Insurance  
 30 Commissioner.

31                   (b) No professional employer organization service organization shall  
 32 refuse to supply any services for which it is licensed in Arkansas to any  
 33 state agency, professional employer organization, or insurer authorized to do  
 34 business in Arkansas and offering to pay the fair and usual compensation for  
 35 the services.

36                   (c)(1) A professional employer organization service organization



1 applying for a license shall include with its application:

2 (A)(i) A copy of its constitution, charter, or articles of  
3 organization, agreement, association, or incorporation;

4 (ii) A copy of its bylaws, plan of operation; and

5 (iii) Any other rules or regulations governing the  
6 conduct of its business;

7 (B) A list of its members and subscribers;

8 (C) The name and address of one (1) or more residents of  
9 this state upon whom notices, process affecting it, or orders of the  
10 commissioner may be served;

11 (D) A statement showing its technical qualifications for  
12 acting in the capacity for which it seeks a license;

13 (E)(i) Financial assurance acceptable to the commissioner,  
14 including:

15 (a)(1) A surety bond issued by a  
16 corporate surety in favor of a trust, maintained at a national bank, with the  
17 bank serving as trustee in an amount of not less than one million dollars  
18 (\$1,000,000), or an equivalent amount of cash or other security acceptable to  
19 the commissioner, on behalf of each professional employer organization  
20 professional employer organization for which the professional employer  
21 organization service organization provides an affidavit under § 23-92-315.

22 (2) The security under subdivision  
23 (c)(1)(E)(i)(a) shall be held by the trust to compensate for payment of  
24 claims made by clients, employees, insurers or taxing authorities in  
25 accordance with the professional employer organization service organization's  
26 policies and procedures, as approved by the commissioner, and if the  
27 professional employer organization fails to pay wages, taxes, insurance  
28 premiums and contributions to employee retirement plans as promised in its  
29 professional employer organization service arrangement or as required by law;

30 (b) A surety bond issued by a corporate surety  
31 in favor of the State of Arkansas in the amount of not less than one hundred  
32 thousand dollars (\$100,000), the terms and conditions of which shall be  
33 approved by the commissioner; and

34 (ii) The one hundred thousand dollar (\$100,000)  
35 surety bond shall be conditioned so that any professional employer  
36 organization for which the professional employer organization service

1 organization provides an affidavit under § 23-92-315 and each member,  
2 employee, shareholder, or officer or a person, firm partnership, corporation,  
3 or association operating as an agent of the professional employer  
4 organization will not violate rules, regulations, or orders lawfully  
5 promulgated by the commissioner under §§ 23-92-301 - 23-92-320 or fail to pay  
6 any wages due under any contract made by the professional employer  
7 organization in the conduct of its business under §§ 23-92-301 - 23-92-320;

8 (F) License fees as provided by § 23-61-401 for rate  
9 service organizations; and

10 (G) Any other relevant information and documents that the  
11 commissioner may require.

12 (2)(A) Every organization which has applied for a license shall  
13 notify the commissioner of every material change in facts or in the documents  
14 on which its application was based.

15 (B) Any amendment to a document filed under this section  
16 shall become effective thirty (30) days after it is filed.

17 (3)(A) If the commissioner finds that the applicant and the  
18 natural persons through whom it acts are competent, trustworthy, and  
19 technically qualified to provide the services proposed and that all  
20 requirements of the law are met, he or she shall issue a license specifying  
21 the authorized activity of the applicant.

22 (B) The commissioner shall not issue a license if the  
23 proposed activity would tend to create a monopoly or to lessen substantially  
24 the competition in any market.

25 (4) Licenses issued under this section shall remain in effect  
26 until the licensee withdraws from the state or until the license is suspended  
27 or revoked, if a professional employer service organization under § 23-92-416  
28 continues the license each calendar year, upon the following activity by the  
29 licensee:

30 (A) Payment on or before January 1 of a continuation fee  
31 as provided in § 23-61-401 for rate service organizations;

32 (B) Filing of a letter requesting continuation of its  
33 license for the following calendar year; and

34 (C) Submission of information which may be required by the  
35 commissioner.

36

1 23-92-416. Professional service organizations – Prohibited activities.

2 (a) No professional employer organization shall attempt to monopolize  
3 or to combine or conspire with any other person to monopolize any market or  
4 make any arrangement with any professional employer organization,  
5 professional employer organization service organization, or other person that  
6 has the purpose or effect of unreasonably restraining trade or of  
7 substantially lessening competition in the business of professional employer  
8 organization services or insurance.

9 (b) A professional employer organization service organization may not  
10 have or adopt any rule, or exact any agreement, or formulate or engage in any  
11 program that would require any member or subscriber to:

12 (1) Interfere with the right of any professional employer  
13 organization to conduct business in the state as permitted by law and  
14 independent of that service organization;

15 (2) Utilize some or all of its services as provided by the  
16 service organization’s policies and procedures as approved by the  
17 commissioner;

18 (3) Adhere to its standards, procedures or membership  
19 requirements, except on a voluntary basis; or

20 (4) Prevent any professional employer organization from acting  
21 independently.

22  
23 23-92-417. Professional employer organization service organizations –  
24 Permitted activities.

25 Any professional employer organization service organization, in  
26 addition to other activities permitted, may:

27 (1) Provide services under §§ 23-92-314 and 23-92-319;

28 (2) Develop and administer standards, procedures and programs of  
29 accreditation and financial assurance and other services for professional  
30 employer organizations and state agencies, unless otherwise prohibited by  
31 law; and

32 (3) Furnish any other services not prohibited by this  
33 subchapter.

34  
35 23-92-418. Filing of information.

36 (a) Each professional employer service organization shall file with

1 the commissioner each affidavit and related document and information under §  
2 23-92-319 on or before the date the affidavit or related document and  
3 information are otherwise due, as prescribed by the Insurance Commissioner.

4 (b) The commissioner may extend the filing deadline by prior written  
5 notice to the filer.

6  
7 23-92-419. Rules and regulations.

8 (a)(1) The Insurance Commissioner may prescribe rules and regulations  
9 for the conduct of the business of professional employer organizations needed  
10 to implement this subchapter.

11 (2) The commissioner shall adopt rules and regulations under  
12 this subchapter in compliance with the Arkansas Administrative Procedure Act,  
13 § 25-15-201 et seq.

14 (b)(1) The commissioner may adopt reasonable rules for use by  
15 professional employer organization service organizations to record and report  
16 to the commissioner rates and other information determined by the  
17 commissioner to be necessary or appropriate for the administration of this  
18 subchapter and for the effectuation of its purposes.

19 (2) The commissioner may designate one (1) or more professional  
20 employer organization service organizations to assist him or her in  
21 gathering, compiling, and reporting the information.

22  
23 SECTION 3. Arkansas Code § 23-61-401 (1)(E), concerning license fees  
24 for rate service organizations, is amended to read as follows:

25 (E) Issuance of original license for rate service organizations  
26 and professional employer organization service  
27 organizations.....500.00

28  
29 SECTION 4. Arkansas Code § 23-61-401(2)(C), concerning fees for annual  
30 continuation of licenses for rate service organizations is amended to read as  
31 follows:

32 (C) Rate service organizations and professional employer organization  
33 service organizations, annual continuation of  
34 license.....100.00

35  
36 SECTION 5. Arkansas Code § 11-9-408(c) is amended to read as follows:

1 (c) Coverage. (1) No policy or contract of insurance shall be issued  
 2 against liability under this chapter unless the policy or contract covers the  
 3 entire liability of the employer. Split coverage whereby some employees of an  
 4 employer are insured by one carrier and other employees are insured by  
 5 another carrier, or by the Arkansas Workers' Compensation Insurance Plan, §  
 6 23-67-301 et seq., or a plan of self-insurance, is expressly prohibited  
 7 except for:

8 (A) A policy issued in accordance with ~~§ 23-92-315(3)~~ §  
 9 23-94-409 so long as all employees performing services for a client are  
 10 covered under the same policy, contract, or plan; or

11 (B) A policy issued covering the liability of an employer  
 12 or of multiple employers as to specific jobs, ventures, contracts, or  
 13 undertakings, but only if such policy meets with the reasonable satisfaction  
 14 and approval of the Insurance Commissioner that the policy is in the best  
 15 interest of the employers and the employees concerned and does not unduly or  
 16 improperly affect the continuity of Workers' Compensation coverage by  
 17 seriously and negatively affecting other carriers and agents with outstanding  
 18 policies issued to any of the employers in issue.

19 (2) As to any questions of liability between the employer and  
 20 the carrier, the terms of the policy or contract shall govern.

21  
 22 SECTION 6. Arkansas Code § 19-6-301(172) concerning certain special  
 23 reveunes enumerated, is amended to read as follows:

24 (172) The additional fees assessed or imposed upon insurers, insurance  
 25 agents, brokers, professional bail bond companies, and other licensees or  
 26 registrants, § 23-61-711; the additional professional bail bond company fees,  
 27 § 17-19-111; health maintenance organization fees, § 23-76-127(c); ~~and~~  
 28 ~~employee leasing firm annual~~ professional employer organizations' biennial  
 29 license fees, § 23-92-309 § 23-92-407; and professional service organization  
 30 affidavit fees, § 23-92-414;

31  
 32 SECTION 7. Arkansas Code § 23-67-304(b), concerning Workers'  
 33 Compensation Insurance Plans, is amended to read as follows:

34 (b) The plan shall provide for the issuance of a policy covering the  
 35 entire liability of the employer as to the business for which workers'  
 36 compensation insurance has been rejected. Nothing in this subsection shall

1 modify or repeal the provisions of ~~§ 23-92-315(3)~~ § 23-92-409.

2  
 3 SECTION 8. Arkansas Code § 23-86-303(9), concerning definitions for  
 4 group health insurance availability and portability laws, is amended to read  
 5 as follows:

6 (9)(A) "Employee" has the meaning given the term under § 3(6) of  
 7 the Employee Retirement Income Security Act of 1974.

8 (B) To the extent not in conflict with the Employee  
 9 Retirement Income Security Act of 1974, the term "employee" also means a  
 10 person who is employed by an employer for thirty (30) or more hours a week  
 11 and includes an employee who is employed by a client of a professional  
 12 employer organization for thirty (30) or more hours a week under a  
 13 professional employer organization arrangement as governed under §§ 23-92-401  
 14 through 23-92-419;

15  
 16 SECTION 9. Arkansas Code Title 23, Chapter 92, Subchapter 3, is  
 17 repealed.

18 ~~23-92-301. Short title.~~

19 ~~This subchapter shall be known and may be cited as the "Arkansas~~  
 20 ~~Employee Leasing Act".~~

21  
 22 ~~23-92-302. Definitions.~~

23 ~~As used in this subchapter, unless the context otherwise requires:~~

24 ~~(1) "Commissioner" means the Insurance Commissioner;~~

25 ~~(2)(A) "Employee leasing arrangement" means an arrangement,~~  
 26 ~~under contract or otherwise, whereby one (1) person, the employee leasing~~  
 27 ~~firm, assigns employees to perform services for another person, the~~  
 28 ~~recipient, or client, whereby:~~

29 ~~(i) The arrangement is intended to be, or is,~~  
 30 ~~ongoing rather than temporary in nature; and~~

31 ~~(ii) Employer responsibilities, including the right~~  
 32 ~~of direction and control of the employees, are shared by the employee leasing~~  
 33 ~~firm and the recipient.~~

34 ~~(B) The term employee leasing arrangement shall not~~  
 35 ~~include services performed by temporary employees or by persons determined to~~  
 36 ~~be independent contractors with respect to the recipient;~~

1           ~~(3)(A) “Employee leasing firm” means any person engaged in~~  
 2 ~~providing the services of employees pursuant to one (1) or more employee~~  
 3 ~~leasing arrangements.~~

4           ~~(B) For the purposes of this subchapter, unless otherwise~~  
 5 ~~stated, the term “employee leasing firm” shall also mean and refer to an~~  
 6 ~~“employee leasing firm group”; and~~

7           ~~(4) “Temporary employee” means a person employed either through~~  
 8 ~~another person or directly by an employer to support or supplement the~~  
 9 ~~existing work force in special situations such as employee absences,~~  
 10 ~~temporary skill shortages, seasonal workloads, and special assignments and~~  
 11 ~~projects with the expectation that the worker’s position will be terminated~~  
 12 ~~upon the completion of the task or function.~~

13  
 14       ~~23-92-303. Commissioner — Powers and duties.~~

15       ~~The Insurance Commissioner shall have authority to prescribe such rules~~  
 16 ~~and regulations for the conduct of the business of employee leasing firms as~~  
 17 ~~may be deemed necessary to carry out the provisions of this subchapter. These~~  
 18 ~~rules shall have the force and effect of law and shall be enforced by the~~  
 19 ~~commissioner in the same manner as the provisions of this subchapter.~~  
 20 ~~Adoption of rules and regulations pursuant to this subsection shall be~~  
 21 ~~carried out in compliance with the Arkansas Administrative Procedure Act, §~~  
 22 ~~25-15-201 et seq.~~

23  
 24       ~~23-92-304. Exemptions.~~

25       ~~The provisions of this subchapter do not apply to:~~

26           ~~(1) A labor organization; or~~

27           ~~(2) The State of Arkansas, any of its agencies and departments,~~  
 28 ~~any political subdivision of this state, or the United States and any program~~  
 29 ~~or agency thereof.~~

30  
 31       ~~23-92-305. License — Penalties.~~

32       ~~(a)(1) No person shall engage in the business of or act as any class~~  
 33 ~~of employee leasing firm unless he first obtains a license from the Insurance~~  
 34 ~~Commissioner.~~

35           ~~(2)(A) Two (2) or more, but not more than five (5), employee~~  
 36 ~~leasing firms that are corporations which are majority owned by the same~~

1 ultimate parent, entity, or persons may be licensed as an employee leasing  
 2 firm group.

3 (B) An employee leasing firm group may satisfy the  
 4 reporting and financial assurance requirements of this subchapter on a  
 5 consolidated basis.

6 (C) As a condition of licensing as an employee leasing  
 7 firm group, each company that is a member of the group shall guarantee  
 8 payment of all financial obligations with respect to wages, employment taxes,  
 9 and employee benefits of each other member of the group.

10 (b)(1) Any person who shall engage in the business of or act as an  
 11 employee leasing firm without first procuring a license or otherwise violate  
 12 the provisions of this subchapter or any rules or regulations promulgated by  
 13 the commissioner pursuant to this subchapter shall be liable for a civil  
 14 penalty for each such offense of not less than two hundred fifty dollars  
 15 (\$250) nor more than five thousand dollars (\$5,000).

16 (2) In addition to the penalties described in subdivision (b)(1)  
 17 of this section, the commissioner shall have the statutory power to enjoin or  
 18 restrain by bringing an action in the circuit or chancery court of Pulaski  
 19 County against any person who engages in the business of or acts as an  
 20 employee leasing firm without having first procured a license for so engaging  
 21 or acting.

22  
 23 ~~23-92-306. License—Application.~~

24 Every applicant for an initial employee leasing firm license and every  
 25 applicant for a renewal license shall file with the Insurance Commissioner a  
 26 completed application on a form prescribed and furnished by the commissioner.

27  
 28 ~~23-92-307. Employee leasing firm license—Financial assurance~~  
 29 ~~required.~~

30 (a)(1) Every application for issuance or renewal of a license as a  
 31 class or classes of employee leasing firm pursuant to the provisions of this  
 32 subchapter shall be accompanied by a surety bond issued by a corporate surety  
 33 in the amount of not less than one hundred thousand dollars (\$100,000).

34 (2) The terms and conditions of the bond shall be approved by  
 35 the Insurance Commissioner.

36 (3) The bond shall be conditioned that the licensee and each



1 member, employee, shareholder, or officer of a person, firm, partnership,  
2 corporation, or association operating as an agent of the licensee will not  
3 violate the provisions of this subchapter or violate rules, regulations, or  
4 orders lawfully promulgated by the commissioner pursuant to this subchapter  
5 or fail to pay any wages due under any contract made by the licensee in the  
6 conduct of its business subject to this subchapter.

7 (4) ~~The bond shall secure the performance of an employee leasing  
8 firm's responsibilities to its leased employees for payment of wages.~~

9 (5)(A) ~~The bond required by this section shall be a surety bond  
10 issued by a corporate surety or insurer authorized to do business in the  
11 State of Arkansas.~~

12 (B) ~~In lieu of a surety bond, the employee leasing firm  
13 may deposit in a depository designated by the commissioner securities with a  
14 market value equivalent to the amount required for a surety bond. The  
15 securities so deposited shall include authorization to the commissioner to  
16 sell any such securities in an amount sufficient to pay any amounts secured  
17 by the bond or securities.~~

18 (b)(1) ~~If any person shall be aggrieved by the misconduct of any  
19 licensee, that person may maintain an action in his own name upon the bond or  
20 policy of the employee leasing firm in any court of competent jurisdiction in  
21 this state or in the Circuit Court of Pulaski County.~~

22 (2) ~~All claims shall be assignable, and the assignee shall be  
23 entitled to the same remedies upon the bond of the licensee as the person  
24 aggrieved would have been entitled if the claim had not been assigned.~~

25 (3) ~~Any claim so assigned may be enforced in the name of the  
26 assignee. Any remedies given by this section shall not be exclusive of any  
27 other remedy which would otherwise exist.~~

28 (c) ~~Action on the bond required by this section may be maintained by  
29 the commissioner in the name of the State of Arkansas in any court of  
30 competent jurisdiction in this state, or in the Circuit Court of Pulaski  
31 County, for the benefit of any person or persons aggrieved by the misconduct  
32 of the licensee.~~

33 (d) ~~If any licensee fails to file a new bond with the commissioner  
34 within thirty (30) days after notice of cancellation by the surety of the  
35 bond required by this section, the license issued to the licensee or the  
36 principal under the bond shall be deemed suspended until such time as a new~~

1 surety bond is filed with and approved by the commissioner. A person whose  
 2 license is suspended pursuant to this section shall not carry on the business  
 3 of an employee leasing firm during the period of the suspension.

4 (e) In lieu of the bond requirement set forth in subsection (a) of  
 5 this section, an employee leasing firm may provide a financial statement  
 6 prepared by an independent certified public accountant in accordance with  
 7 generally accepted accounting principles as of a date within the six (6)  
 8 months prior to the date of application or renewal, which statement shows a  
 9 minimum net worth of at least one hundred thousand dollars (\$100,000).

10 (f) The commissioner may by rule and regulation exempt from all  
 11 requirements of this section employee leasing firms or groups without  
 12 substantial presence in this state which hold restricted licenses in good  
 13 standing.

14  
 15 ~~23-92-308. Investigation of applicant by commissioner.~~

16 An application for a license shall be rejected by the Insurance  
 17 Commissioner if it is found that any person named in the license application  
 18 is not of good moral character, business integrity, or financial  
 19 responsibility, or there is a good and sufficient reason within the meaning  
 20 and purpose of this subchapter for rejecting the application.

21  
 22 ~~23-92-309. License fees.~~

23 An applicant shall pay as an annual fee for a license a sum to be  
 24 established by the Insurance Commissioner, but not to exceed five thousand  
 25 dollars (\$5,000) per year. All such license fees shall be collected by the  
 26 commissioner and shall be deposited directly into the State Insurance  
 27 Department Trust Fund as special revenues for the operation, personnel,  
 28 support, and maintenance of the State Insurance Department, as provided in  
 29 the State Insurance Department Trust Fund Act of 1993, § 23-61-701 et seq.,  
 30 as it is popularly known.

31  
 32 ~~23-92-310. Restricted out of state certificate and reciprocity.~~

33 The Insurance Commissioner by regulation may prescribe rules allowing  
 34 employee leasing firms domiciled in other states to obtain a restricted  
 35 license for limited operations within the state and to grant licenses by  
 36 reciprocity.

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~~23-92-311. Renewal of license.~~

~~(a) Every license issued pursuant to this subchapter shall remain in force for one (1) year from the date of issue, unless the license has been revoked pursuant to the provisions of this subchapter. Commencing on and after June 1, 1999, annual renewal applications shall be filed with the Insurance Commissioner by the employee leasing firms or groups no later than July 1 annually.~~

~~(b) The commissioner shall prescribe regulations setting forth the procedures for renewal of the license.~~

~~23-92-312. Issuance, refusal, suspension, or revocation of license—  
Grounds.~~

~~(a) The Insurance Commissioner shall issue a license as an employee leasing firm to any person who qualifies for the license under the terms of this subchapter.~~

~~(b) The commissioner may, in addition, refuse to issue a license to any person or may suspend or revoke the license of any employee leasing firm or impose administrative fines as provided for in § 23-92-305, when the commissioner finds that the licensee or applicant has violated any of the provisions of this subchapter, the rules and regulations or other orders lawfully promulgated by the commissioner, the conditions of financial assurances required by § 23-92-307, has engaged in a fraudulent, deceptive, or dishonest practice; or, for good and sufficient cause, finds the licensee or applicant unfit to be an employee leasing firm within the meaning of this subchapter or of any of the rules and regulations or orders lawfully promulgated by the commissioner.~~

~~23-92-313. Refusal, suspension, or revocation of license—Notice and hearing.~~

~~The Insurance Commissioner may not refuse to issue a license or suspend or revoke a license unless it furnishes the person or employee leasing firm with a written statement of the charges against him and affords him an opportunity to be heard on the charges.~~

~~23-92-314. Deceptive practices.~~

1           ~~The Insurance Commissioner may prescribe, by regulation, those acts or~~  
2 ~~omissions which shall be deemed to constitute deceptive practices under this~~  
3 ~~subchapter.~~

4  
5           ~~23-92-315. Licensed employee leasing firms.~~

6           ~~A licensed employee leasing firm shall be deemed an employer of its~~  
7 ~~leased employees and shall perform the following employer responsibilities in~~  
8 ~~conformity with all applicable federal and state laws and regulations:~~

9           ~~(1) Pay wages and collect, report, and pay employment taxes from~~  
10 ~~its own accounts;~~

11           ~~(2) Pay unemployment taxes as required by § 11-10-101 et seq.;~~

12           ~~(3) Ensure that all of its employees are covered by workers'~~  
13 ~~compensation insurance provided in conformance with the laws of this state.~~  
14 ~~Such coverage may be provided through a policy or plan maintained by either~~  
15 ~~the employee leasing firm or the client; provided, however, for purposes of~~  
16 ~~risks insured pursuant to § 23-67-301 et seq., known as the Arkansas Workers'~~  
17 ~~Compensation Insurance Plan, the Insurance Commissioner is authorized to~~  
18 ~~promulgate such rules and regulations as he deems necessary to assure that~~  
19 ~~workers' compensation coverage is available to employees providing services~~  
20 ~~for a client;~~

21           ~~(4) Be entitled and entitle the client, together as joint~~  
22 ~~employers, to the exclusivity of the remedy set forth in § 11-9-105, under~~  
23 ~~both the workers' compensation and employer's liability provisions of a~~  
24 ~~workers' compensation policy or plan that either party has secured within the~~  
25 ~~meaning of § 11-9-105;~~

26           ~~(5) Not be vicariously liable for the liabilities of the client,~~  
27 ~~whether contractual or otherwise; provided that the client shall not be~~  
28 ~~vicariously liable for the liabilities of the employee leasing firm, whether~~  
29 ~~contractual or otherwise. Nothing herein shall limit any direct contractual~~  
30 ~~liability or any joint liability between the client and the employee leasing~~  
31 ~~firm; and~~

32           ~~(6) Sponsor and maintain employee benefit and welfare plans for~~  
33 ~~its leased employees, provided that such plans, if limited to the employees~~  
34 ~~of the employee leasing firm, shall not be deemed to be multiple employer~~  
35 ~~plans or trusts within the meaning of applicable law. Nothing herein shall~~  
36 ~~require an employee leasing firm to provide comparable benefits to employees~~

1 ~~located at different worksites.~~

2  
3 ~~23-92-316. Prohibited conduct.~~

4 ~~(a) No employee leasing firm or other individual, association,~~  
5 ~~company, firm, partnership, or corporation who leases employees may:~~

6 ~~(1) Evade or attempt to evade the provisions of this subchapter~~  
7 ~~by purporting to be the sole employer of the employees it leases;~~

8 ~~(2) Present a proposal to enter into an employee leasing~~  
9 ~~arrangement with a prospective client unless the following notice is printed~~  
10 ~~in not less than 12-point bold type on the first page of the proposal:~~

11 ~~—“This proposal is intended to provide information about the general terms~~  
12 ~~and conditions under which the above named firm will enter into an agreement~~  
13 ~~to provide human resource outsourcing services. Information contained in this~~  
14 ~~proposal does not constitute advice on legal, tax, or insurance matters. For~~  
15 ~~advice on such matters, you should consult with the appropriate licensed~~  
16 ~~professional.”;~~

17 ~~(3) Enter into an employee leasing arrangement without a written~~  
18 ~~provision signed by the client stating that the client is responsible for~~  
19 ~~ensuring with the assistance of a licensed insurance agent that any~~  
20 ~~subcontractor of the client has workers’ compensation coverage as required by~~  
21 ~~law; or~~

22 ~~(4) Transact insurance, as defined in § 23-60-102, except~~  
23 ~~through a licensed resident or nonresident insurance agent.~~

24 ~~(b) For the purposes of this subchapter, transacting insurance shall~~  
25 ~~include any of the following actions by an employee leasing firm or its~~  
26 ~~representatives:~~

27 ~~(1) Soliciting prospective clients based solely or primarily on~~  
28 ~~representation of insurance cost advantages;~~

29 ~~(2) Advising a prospective client regarding insurance coverage;~~  
30 ~~or~~

31 ~~(3) Selling a policy of insurance to a client or employee.~~

32 ~~(c) For the purposes of this subchapter, transacting insurance shall~~  
33 ~~not include any of the following actions by an employee leasing firm or its~~  
34 ~~representatives:~~

35 ~~(1) Soliciting prospective clients to enter into an employee~~  
36 ~~leasing arrangement;~~

1                   ~~(2) Collecting information from a prospective client related to~~  
2 ~~payroll, employee benefits, employment policies, workplace safety, and other~~  
3 ~~employer responsibilities and operational experience;~~

4                   ~~(3) Evaluating collected information to ascertain the employee~~  
5 ~~leasing firm's risk and cost associated with serving a prospective client's~~  
6 ~~workforce;~~

7                   ~~(4) Informing a prospective client of the terms and conditions~~  
8 ~~under which the employee leasing firm will enter into an employee leasing~~  
9 ~~arrangement; or~~

10                   ~~(5) Performing employer responsibilities as required by § 23-92-~~  
11 ~~315.~~

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