

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

As Engrossed: H3/18/03

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 *EMPLOYER*
13 *ORGANIZATION* 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) "Employer service assurance organization" means an organization
18 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 hereby authorize the Arkansas
11 Employment Security Division, the Workers' Compensation Commission, and the
12 Arkansas Insurance Department, or their successors, to release otherwise
13 confidential information to the other above named departments or commission
14 concerning the applicant or professional employer organization upon the
15 written request by the requesting division, department or commission.

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

23 (g)(1) Neither this subchapter nor any professional employer agreement
24 shall affect, limit, restrict, or modify the rights or obligations of any
25 client, professional employer organization, or covered employee with respect
26 to the payment of wages as required by contract or by state or federal law.

27 (2) Neither this subchapter nor any professional employer
28 agreement shall affect, limit, restrict, or modify the rights or obligations
29 of any client, professional employer organization, or covered employee with
30 respect to compliance with the following:

31 (A) Arkansas Code, Title 11, Chapters 2 through 7, Chapter
32 10, and Chapter 12;

33 (B) Arkansas Code, §§ 20-20-301 through 20-20-303;

34 (C) Arkansas Code §§ 22-9-301 through 22-9-315, commonly
35 referred to as the Arkansas Prevailing Wage Law;

36 (D) The Arkansas Civil Rights Act of 1993, §§ 16-123-101

1 et seq.;

2 (E) The Public Employees' Chemical Right to Know Act, §§
3 8-7-1001 et seq; and

4 (F) Arkansas Code § 7-1-102 concerning voting time, § 16-
5 31-106 concerning jury duty, and § 21-4-101 concerning leave of absence for
6 public service.

7
8 23-92-404. Licensing and renewal.

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

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

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

18 (A) The legal name of the professional employer
19 organization and all other names under which the professional employer
20 organization conducts business;

21 (B) The address of the principal place of business of the
22 professional employer organization and the address of each office it
23 maintains in Arkansas;

24 (C) The professional employer organization's taxpayer or
25 employer identification number;

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

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

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

36 (G) A statement of management, which shall include the

1 name and evidence of the business experience of any person who serves as
2 president or chief executive officer, or otherwise has the authority to act
3 as senior executive officer of the professional employer organization; and

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

8 (ii) The financial statement under subdivision
9 (b)(1)(H)(i) of this section shall be prepared in accordance with generally
10 accepted accounting principles, and unless the professional employer
11 organization provides financial assurance as set forth in § 22-92-408(a)(2),
12 the financial statement shall be audited by an independent certified public
13 accountant licensed to practice in Arkansas or the state of domicile of the
14 professional employer organization.

15 (iii) A professional employer organization group may
16 submit combined or consolidated financial statements to meet the requirements
17 of this section.

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

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

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

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

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

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

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

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

6 (b) The order under subdivision
7 (d)(3)(B)(ii)(a) of this section shall provide for an opportunity for the
8 professional employer organization to request a hearing.

9 (c) If the professional employer
10 organization does not request a hearing within thirty (30) days after the
11 entry of the order or if the commissioner finds after a hearing that the
12 professional employer organization's license should not be renewed, the order
13 entered under subdivision (d)(3)(B)(ii)(a) of this section shall become
14 permanent.

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

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

22 (2) As a condition of licensing as a professional employer
23 organization group, each affiliate of the group shall guarantee payment of
24 all financial obligations with respect to wages, employment taxes, and
25 employee benefits of each affiliate of the group.

26 (f)(1) A professional employer organization is exempt from the
27 licensing requirements contained in §§ 23-92-304(a) through (e), 23-92-305,
28 23-92-306, and 23-92-308 if the professional employer organization:

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

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

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

36 (D) Has one hundred (100) or fewer covered employees

1 employed or domiciled in Arkansas.

2 (2) A professional employer organization's exemption from the
3 licensing requirements under this subchapter shall be valid for two (2)
4 years, subject to renewal, for as long as the professional employer
5 organization continues to qualify for the exemption and, on or before the
6 biennial anniversary date of the original grant of exemption, requests the
7 exemption to continue.

8 (g) The commissioner shall maintain a list of professional employer
9 organizations licensed or exempted under this subchapter.

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

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

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

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

19 (j) A person engaged in the business of providing professional
20 employer services shall be subject to licensing under this subchapter
21 regardless of its use of the name "professional employer organization",
22 "PEO", "staff leasing company", "licensed staff leasing company", "employee
23 leasing company", or any other name.

24
25 23-92-405. Controlling person.

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

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

30 (2) Has the education, managerial, or business experience to
31 successfully act as the controlling person of a professional employer
32 organization;

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

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

4 (c) The commissioner may prohibit a person found to qualify as a
5 controlling person under subdivision (a) of this section from exercising
6 control over the professional employer organization if the commissioner
7 subsequently finds that the person no longer qualifies under subsection (a)
8 of this section.

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

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

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

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

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

20 (D) Fraud, deceit, or misconduct in the establishment or
21 maintenance of self-insurance, whether health insurance or Workers'
22 Compensation insurance; or

23 (E) Fraud, deceit, or misconduct in the operation of a
24 professional employer organization;

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

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

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

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

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

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

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

9
10 23-92-406. Changes in control.

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

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

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

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

23 (2) The application under subdivision (b)(1) of this section
24 shall contain the name and address of the proposed new owner, controlling
25 person, and any other information required by the commissioner.

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

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

34 (d)(1) Before recommending that a certificate of approval be issued to
35 an applicant that has applied under subsection (a) or (b) of this section,
36 the commissioner may conduct an investigation of the applicant and examine

1 the records of the entity as part of the investigation in accordance with
2 applicable law.

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

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

11 (e) The commissioner shall waive the requirements of subsection (d) of
12 this section and shall automatically approve the proposed change in ownership
13 if:

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

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

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

21 (f) Any application that is submitted to the commissioner under this
22 section shall be deemed approved if the commissioner has not approved or
23 rejected the application and provided the applicant with the basis for a
24 rejection, within ninety (90) days after the receipt of the completed
25 application.

26
27 23-92-407. Fees.

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

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

34 (c) Each professional employer organization exempt from licensing
35 under the terms of this subsection shall pay an exemption fee in the amount
36 of fifty dollars (\$50.00) upon initial application for exemption and upon

1 each biennial renewal of the exemption.

2 (d) Upon the filing of each request for a change in ownership or
3 controlling person filed under this subchapter, a professional employer
4 organization shall pay a change in ownership fee of five hundred dollars
5 (\$500).

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

9
10 23-92-408. Financial assurance required.

11 (a) Each professional employer organization shall maintain:

12 (1) An audited minimum net worth of at least one hundred
13 thousand dollars (\$100,000), as reflected in the financial statements
14 submitted to the commissioner with the initial licensing, and annually
15 thereafter; or

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

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

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

24 (i) Violate the provisions of this subchapter or
25 violate rules, regulations, or orders lawfully promulgated by the
26 commissioner under this subchapter; or

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

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

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

35 (i) Securities with a minimum market value of at
36 least one hundred thousand dollars (\$100,000) with an approved depository

1 under an approved depository agreement under § 23-69-134(b)(4); or

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

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

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

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

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

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

23 (c)(1) If any person is aggrieved by the misconduct of any licensee,
24 that person may maintain an action in his or her own name upon the bond or
25 assets of the professional employer organization in any court of competent
26 jurisdiction in this state.

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

30 (3) Any assignable claim under subdivision (c)(2) of this
31 section may be enforced in the name of the assignee.

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

34 (d) An action on the bond or other security required by this section
35 may be maintained by the commissioner in the name of the State of Arkansas in
36 any court of competent jurisdiction in this state, for the benefit of any

1 person or persons aggrieved by the misconduct of the licensee.

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

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

10
11 23-92-409. Relationships defined.

12 (a)(1) Except as specifically provided in this subchapter, the
13 coemployment relationship between the client and the professional employer
14 organization, and between each coemployer and each covered employee, shall be
15 governed by the professional employer agreement.

16 (2) Neither this subchapter nor any professional employer
17 agreement shall:

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

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

23 (C) Create any new or additional enforcement right of a
24 covered employee against a professional employer organization not
25 specifically allocated to the professional employer organization in the
26 professional employer agreement or under this subchapter.

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

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

32 (2)(A) The professional employer organization shall be entitled
33 to exercise only the rights, and obligated to perform only the duties and
34 responsibilities, specifically required by this subchapter or by the
35 professional employer agreement.

36 (B) The rights, duties, and obligations of the

1 professional employer organization as coemployer with respect to any covered
2 employee is limited to those rights during, and obligations arising under the
3 professional employer agreement and this subchapter during the term of
4 coemployment by the professional employer organization of the covered
5 employee.

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

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

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

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

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

16 (C) Withhold, collect, report, and remit payroll-related
17 and employment taxes; and

18 (D) To the extent the professional employer organization
19 has assumed responsibility in the professional employer agreement, make
20 payments for employee benefits for covered employees;

21 (3) The professional employer organization and the client shall
22 retain authority to hire, terminate, and discipline the covered employees;
23 and

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

29 (B)(1) If the responsibility under subdivision (C)(4)(A)
30 of this section is allocated to the professional employer organization under
31 a professional employer agreement, the agreement shall require the
32 professional employer organization to maintain records regarding the premium
33 and loss experience related to Workers' Compensation insurance provided to
34 covered employees under the agreement.

35 (2) The professional employer agreement shall also
36 provide that, if requested by the client at or after the termination of the

1 agreement, the professional employer organization shall provide the records
2 maintained under subdivision (c)(4)(B)(1) to the client.

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

8 (5)(A) Upon request, during the period the client is a party to
9 a professional employer organization arrangement, and for a period of ninety
10 (90) days after termination of a professional employer organization
11 arrangement, a client or former client is entitled to receive records of the
12 professional employer organization regarding payroll, Workers' Compensation
13 coverage, losses and claims, and employee benefits provided under the
14 professional employer organization arrangement.

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

18 (ii) This section does not require the disclosure of
19 information to a client or former client concerning another client or former
20 client of the professional employer organization.

21 (C) Either the professional employer organization or the
22 controlling person, to the extent the person has access to the information,
23 shall furnish the information requested within thirty (30) days of receiving
24 the request.

25 (d) With respect to each professional employer agreement entered into
26 by a professional employer organization, each professional employer
27 organization shall provide written notice to each covered employee affected
28 by the agreement of the general nature of the coemployment relationship
29 between and among the professional employer organization, the client, and any
30 covered employee.

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

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

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

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

15 (3) For purposes of §§ 23-86-201 through 23-86-204 and §§ 23-86-
16 207 through 23-86-209, with respect to a health benefit plan sponsored by a
17 professional employer organization, a professional employer organization
18 shall be considered the employer of all of its covered employees, and all
19 covered employees of one (1) or more clients participating in a health
20 benefit plan sponsored by a single professional employer organization shall
21 be considered employees of the professional employer organization.

22 (4) If a professional employer organization offers to its
23 covered employees any health benefit plan that is not fully insured by an
24 authorized insurer, the plan shall:

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

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

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

31 (g) Except to the extent otherwise provided in a professional employer
32 agreement:

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

36 (2) A client shall not be liable for the acts, errors, or

1 omissions of a professional employer organization, or of any covered employee
2 of the client and a professional employer organization when the covered
3 employee is acting under the direction and control of the professional
4 employer organization;

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

9 (4) A covered employee is not, solely as the result of being a
10 covered employee of a professional employer organization, an employee of the
11 professional employer organization for purposes of general liability,
12 insurance, fidelity bonds, surety bonds or, employer's liability that is not
13 covered by Workers' Compensation carried by the professional employer
14 organization, unless the covered employees are included by specific reference
15 in the professional employer agreement and applicable prearranged employment
16 contract, insurance contract, or bond.

17 (h) Except as provided under § 23-92-411, the sale of professional
18 employer services provided by professional employer organizations licensed
19 under this subchapter shall not constitute the sale of insurance for purposes
20 of Arkansas insurance law.

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

24 (j) A licensed professional employer organization shall be deemed an
25 employer of the covered employees and shall perform the following employer
26 responsibilities in conformity with all applicable federal and state laws and
27 regulations to:

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

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

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

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

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

6 (4) Be entitled and to entitle the client, together as joint
7 employers, to the exclusive remedy under § 11-9-105, under both the Workers'
8 Compensation and employer's liability provisions of a Workers' Compensation
9 policy or plan that either party has secured within the meaning of § 11-9-
10 105;

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

13 (B) However, the client shall not be vicariously liable
14 for the liabilities of the professional employer organization, whether
15 contractual or otherwise.

16 (C) This section shall limit any direct contractual
17 liability or any joint liability between the client and the professional
18 employer organization.

19
20 23-92-410. Issuance, refusal, suspension, or revocation of license -
21 grounds and procedure.

22 (a) The Insurance Commissioner shall issue a license as a professional
23 employer organization to any person who qualifies for the license under the
24 terms of this subchapter.

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

29 (1) That the licensee or applicant has violated any of the
30 provisions of this subchapter, the rules and regulations or other orders
31 lawfully promulgated by the commissioner, or the conditions of financial
32 assurances required by this subchapter;

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

35 (3) For good and sufficient cause, finds that the licensee or
36 applicant is unfit to be a professional employer organization within the

1 meaning of this subchapter or of any of the rules and regulations or orders
2 lawfully promulgated by the commissioner.

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

7
8 23-92-411. Deceptive practices.

9 (a) No professional employer organization shall:

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

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

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

21 (3) Enter into a professional employer agreement without a
22 written provision signed by the client stating that the client is responsible
23 for ensuring with the assistance of a licensed insurance producer that any
24 subcontractor of the client has Workers’ Compensation coverage as required by
25 law;

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

28 (5) Use the name or title “licensed employee leasing company”,
29 “employee leasing company”, “employee leasing company group”, “professional
30 employer”, “professional employer organization”, “PEO”, “controlling person”,
31 or words that would tend to lead one to believe that the person or entity is
32 licensed under this subchapter, when the person or entity has not been
33 licensed under this subchapter;

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

36 (7) Fail to maintain Workers’ Compensation insurance as required

1 by this subchapter;

2 (8) Conduct business without an active license;

3 (9) Transfer or attempt to transfer a license issued under this
4 subchapter;

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

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

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

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

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

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

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

23
24 23-92-412. Penalties.

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

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

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

4 (c) The Insurance Commissioner shall have the statutory power to
5 enjoin or restrain by bringing an action in the Circuit Court of Pulaski
6 County against any person who engages in the business of, or acts as a
7 professional employer organization without having first procured a license
8 for engaging in the business of a professional employer organization or
9 acting as a professional employer organization.

10
11 23-92-413. Nondisclosure of proprietary information.

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

17 (2)(A) The commissioner shall not consider proprietary material
18 under this subchapter to be subject to mandatory disclosure under § 25-19-105
19 (b)(9)(A).

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

24 (C) The commissioner shall give notice in writing to any
25 professional employer organization or professional employer organization
26 group whose client lists or other material that the commissioner deems to be
27 "proprietary" are being sought under the Freedom of Information Act of 1967,
28 § 25-19-101 et seq.

29 (b) Notwithstanding subsection (a) of this section or any other law
30 governing disclosure of confidential information, the commissioner, the
31 director of the Arkansas Employment Security Department, and the Workers'
32 Compensation Commission may exchange information among themselves for the
33 purposes of regulating professional employer organizations.

34
35 23-92-414. Employer service assurance organization affidavit.

36 (a) The Insurance Commissioner may, by rule and regulation, provide

1 for the acceptance of a employer service assurance organization affidavit
2 provided on behalf of a professional employer organization in lieu of the
3 requirements under §§ 23-92-404 through 23-92-406 and § 23-92-408, and the
4 fees provided for in § 23-92-407.

5 (b) The fee for filing a employer service assurance organization
6 affidavit shall be five hundred dollars (\$500) for initial licensure and five
7 hundred dollars (\$500) for each biennial renewal.

8
9 23-92-415. Licensing of employer service assurance organizations.

10 (a)(1) No employer service assurance organization shall provide any
11 service relating to the regulation of professional employer organizations,
12 and no state agency, professional employer organization, or insurer shall
13 utilize the services of the organization for those purposes, unless the
14 organization has obtained a license from the commissioner.

15 (2) No state agency, professional employer organization, or
16 insurer shall use the services of a employer service assurance organization
17 unless the organization has obtained a license from the commissioner.

18 (b) No employer service assurance organization shall refuse to supply
19 any services for which it is licensed in Arkansas to any state agency,
20 professional employer organization, or insurer authorized to do business in
21 Arkansas and offering to pay the fair and usual compensation for the
22 services.

23 (c)(1) A employer service assurance organization applying for a
24 license shall include with its application:

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

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

28 (iii) Any other rules or regulations governing the
29 conduct of its business;

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

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

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

36 (E)(i) Financial assurance acceptable to the commissioner,

1 including:

2 (a)(1) A surety bond issued by a
3 corporate surety in favor of a trust, maintained at a national bank, with the
4 bank serving as trustee in an amount of not less than one million dollars
5 (\$1,000,000), or an equivalent amount of cash or other security acceptable to
6 the commissioner, on behalf of each professional employer organization for
7 which the employer service assurance organization provides an affidavit under
8 § 23-92-414.

9 (2) The security under subdivision
10 (c)(1)(E)(i)(a) shall be held by the trust to compensate for payment of
11 claims made by clients, employees, insurers or taxing authorities in
12 accordance with the employer service assurance organization's policies and
13 procedures, as approved by the commissioner, and if the professional employer
14 organization fails to pay wages, taxes, insurance premiums and contributions
15 to employee retirement plans as promised in its professional employer
16 organization service arrangement or as required by law;

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

21 (ii) The one hundred thousand dollar (\$100,000)
22 surety bond shall be conditioned so that any professional employer
23 organization for which the employer service assurance organization provides
24 an affidavit under § 23-92-414 and each member, employee, shareholder, or
25 officer or a person, firm partnership, corporation, or association operating
26 as an agent of the professional employer organization will not violate rules,
27 regulations, or orders lawfully promulgated by the commissioner under §§ 23-
28 92-401 through 23-92-419 or fail to pay any wages due under any contract made
29 by the professional employer organization in the conduct of its business
30 under §§ 23-92-401 through 23-92-419;

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

33 (G) Any other relevant information and documents that the
34 commissioner may require.

35 (2)(A) Every organization which has applied for a license shall
36 notify the commissioner of every material change in facts or in the documents

1 on which its application was based.

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

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

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

12 (4) Licenses issued under this section shall remain in effect
13 until the licensee withdraws from the state or until the license is suspended
14 or revoked, if a *employer service assurance organization* under § 23-92-416
15 continues the license each calendar year, upon the following activity by the
16 licensee:

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

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

21 (C) Submission of information which may be required by the
22 commissioner.

23
24 23-92-416. *Employer service assurance organizations* – Prohibited
25 activities.

26 (a) No *employer service assurance organization* shall attempt to
27 monopolize or to combine or conspire with any other person to monopolize any
28 market or make any arrangement with any professional employer organization,
29 *employer service assurance organization*, or other person that has the purpose
30 or effect of unreasonably restraining trade or of substantially lessening
31 competition in the business of professional employer organization services or
32 insurance.

33 (b) A *employer service assurance organization* may not have or adopt
34 any rule, or exact any agreement, or formulate or engage in any program that
35 would require any member or subscriber to:

36 (1) Interfere with the right of any professional employer

1 organization to conduct business in the state as permitted by law and
2 independent of that service organization;

3 (2) Utilize some or all of its services as provided by the
4 service organization's policies and procedures as approved by the
5 commissioner;

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

8 (4) Prevent any professional employer organization from acting
9 independently.

10
11 23-92-417. Employer service assurance organization – Permitted
12 activities.

13 Any employer service assurance organization, in addition to other
14 activities permitted, may:

15 (1) Provide services under §§ 23-92-414 and 23-92-419(b);

16 (2) Develop and administer standards, procedures and programs of
17 accreditation and financial assurance and other services for professional
18 employer organizations and state agencies, unless otherwise prohibited by
19 law; and

20 (3) Furnish any other services not prohibited by this
21 subchapter.

22
23 23-92-418. Filing of information.

24 (a) Each employer service assurance organization shall file with the
25 commissioner each affidavit and related document and information under § 23-
26 92-414 or § 23-92-419(b) on or before the date the affidavit or related
27 document and information are otherwise due, as prescribed by the Insurance
28 Commissioner.

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

31
32 23-92-419. Rules and regulations.

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

36 (2) The commissioner shall adopt rules and regulations under

1 this subchapter in compliance with the Arkansas Administrative Procedure Act,
2 § 25-15-201 et seq.

3 (b)(1) The commissioner may adopt reasonable rules for use by employer
4 service assurance organizations to record and report to the commissioner
5 information determined by the commissioner to be necessary or appropriate for
6 the administration of this subchapter and for the effectuation of its
7 purposes.

8 (2) The commissioner may designate one (1) or more employer
9 service assurance organizations to assist him or her in gathering, compiling,
10 and reporting the information.

11
12 SECTION 3. Arkansas Code § 23-61-401 (1)(E), concerning license fees
13 for rate service organizations, is amended to read as follows:

14 (E) Issuance of original license for rate service organizations
15 and employer service assurance organizations.....500.00
16

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

20 Rate service organizations and employer service assurance
21 organizations, annual continuation of
22 license.....100.00
23

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

25 (c) Coverage. (1) No policy or contract of insurance shall be issued
26 against liability under this chapter unless the policy or contract covers the
27 entire liability of the employer. Split coverage whereby some employees of an
28 employer are insured by one carrier and other employees are insured by
29 another carrier, or by the Arkansas Workers' Compensation Insurance Plan, §
30 23-67-301 et seq., or a plan of self-insurance, is expressly prohibited
31 except for:

32 (A) A policy issued in accordance with ~~§ 23-92-315(3)~~ §
33 23-94-409 so long as all employees performing services for a client are
34 covered under the same policy, contract, or plan; or

35 (B) A policy issued covering the liability of an employer
36 or of multiple employers as to specific jobs, ventures, contracts, or

1 undertakings, but only if such policy meets with the reasonable satisfaction
2 and approval of the Insurance Commissioner that the policy is in the best
3 interest of the employers and the employees concerned and does not unduly or
4 improperly affect the continuity of Workers' Compensation coverage by
5 seriously and negatively affecting other carriers and agents with outstanding
6 policies issued to any of the employers in issue.

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

9
10 SECTION 6. Arkansas Code § 19-6-301(172) concerning certain special
11 reveunes enumerated, is amended to read as follows:

12 (172) The additional fees assessed or imposed upon insurers, insurance
13 agents, brokers, professional bail bond companies, and other licensees or
14 registrants, § 23-61-711; the additional professional bail bond company fees,
15 § 17-19-111; health maintenance organization fees, § 23-76-127(c); ~~and~~
16 ~~employee leasing firm annual professional employer organizations' biennial~~
17 ~~license fees, § 23-92-309~~ § 23-92-407; and " " affidavit fees, § 23-92-414;
18

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

21 (b) The plan shall provide for the issuance of a policy covering the
22 entire liability of the employer as to the business for which workers'
23 compensation insurance has been rejected. Nothing in this subsection shall
24 modify or repeal the provisions of ~~§ 23-92-315(3)~~ § 23-92-409.
25

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

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

31 (B) To the extent not in conflict with the Employee
32 Retirement Income Security Act of 1974, the term "employee" also means a
33 person who is employed by an employer for thirty (30) or more hours a week
34 and includes an employee who is employed by a client of a professional
35 employer organization for thirty (30) or more hours a week under a
36 professional employer organization arrangement as governed under §§ 23-92-401

1 through 23-92-419;
2

3 SECTION 9. Arkansas Code Title 23, Chapter 92, Subchapter 3, is
4 repealed.

5 ~~23-92-301.—Short title.~~

6 ~~This subchapter shall be known and may be cited as the “Arkansas~~
7 ~~Employee Leasing Act”.~~

8
9 ~~23-92-302.—Definitions.~~

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

11 ~~(1) “Commissioner” means the Insurance Commissioner;~~

12 ~~(2)(A) “Employee leasing arrangement” means an arrangement,~~
13 ~~under contract or otherwise, whereby one (1) person, the employee leasing~~
14 ~~firm, assigns employees to perform services for another person, the~~
15 ~~recipient, or client, whereby:~~

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

18 ~~(ii) Employer responsibilities, including the right~~
19 ~~of direction and control of the employees, are shared by the employee leasing~~
20 ~~firm and the recipient.~~

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

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

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

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

36

1 ~~23-92-303. Commissioner Powers and duties.~~

2 ~~The Insurance Commissioner shall have authority to prescribe such rules~~
3 ~~and regulations for the conduct of the business of employee leasing firms as~~
4 ~~may be deemed necessary to carry out the provisions of this subchapter. These~~
5 ~~rules shall have the force and effect of law and shall be enforced by the~~
6 ~~commissioner in the same manner as the provisions of this subchapter.~~
7 ~~Adoption of rules and regulations pursuant to this subsection shall be~~
8 ~~carried out in compliance with the Arkansas Administrative Procedure Act, §~~
9 ~~25-15-201 et seq.~~

10
11 ~~23-92-304. Exemptions.~~

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

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

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

17
18 ~~23-92-305. License Penalties.~~

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

22 ~~(2)(A) Two (2) or more, but not more than five (5), employee~~
23 ~~leasing firms that are corporations which are majority owned by the same~~
24 ~~ultimate parent, entity, or persons may be licensed as an employee leasing~~
25 ~~firm group.~~

26 ~~(B) An employee leasing firm group may satisfy the~~
27 ~~reporting and financial assurance requirements of this subchapter on a~~
28 ~~consolidated basis.~~

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

33 ~~(b)(1) Any person who shall engage in the business of or act as an~~
34 ~~employee leasing firm without first procuring a license or otherwise violate~~
35 ~~the provisions of this subchapter or any rules or regulations promulgated by~~
36 ~~the commissioner pursuant to this subchapter shall be liable for a civil~~

1 penalty for each such offense of not less than two hundred fifty dollars
2 (\$250) nor more than five thousand dollars (\$5,000).

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

9
10 ~~23-92-306. License—Application.~~

11 Every applicant for an initial employee leasing firm license and every
12 applicant for a renewal license shall file with the Insurance Commissioner a
13 completed application on a form prescribed and furnished by the commissioner.
14

15 ~~23-92-307. Employee leasing firm license—Financial assurance~~
16 ~~required.~~

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

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

23 (3) The bond shall be conditioned that the licensee and each
24 member, employee, shareholder, or officer of a person, firm, partnership,
25 corporation, or association operating as an agent of the licensee will not
26 violate the provisions of this subchapter or violate rules, regulations, or
27 orders lawfully promulgated by the commissioner pursuant to this subchapter
28 or fail to pay any wages due under any contract made by the licensee in the
29 conduct of its business subject to this subchapter.

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

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

35 (B) In lieu of a surety bond, the employee leasing firm
36 may deposit in a depository designated by the commissioner securities with a

1 ~~market value equivalent to the amount required for a surety bond. The~~
2 ~~securities so deposited shall include authorization to the commissioner to~~
3 ~~sell any such securities in an amount sufficient to pay any amounts secured~~
4 ~~by the bond or securities.~~

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

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

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

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

20 ~~(d) If any licensee fails to file a new bond with the commissioner~~
21 ~~within thirty (30) days after notice of cancellation by the surety of the~~
22 ~~bond required by this section, the license issued to the licensee or the~~
23 ~~principal under the bond shall be deemed suspended until such time as a new~~
24 ~~surety bond is filed with and approved by the commissioner. A person whose~~
25 ~~license is suspended pursuant to this section shall not carry on the business~~
26 ~~of an employee leasing firm during the period of the suspension.~~

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

33 ~~(f) The commissioner may by rule and regulation exempt from all~~
34 ~~requirements of this section employee leasing firms or groups without~~
35 ~~substantial presence in this state which hold restricted licenses in good~~
36 ~~standing.~~

1
2 ~~23-92-308.—Investigation of applicant by commissioner.~~

3 ~~An application for a license shall be rejected by the Insurance~~
4 ~~Commissioner if it is found that any person named in the license application~~
5 ~~is not of good moral character, business integrity, or financial~~
6 ~~responsibility, or there is a good and sufficient reason within the meaning~~
7 ~~and purpose of this subchapter for rejecting the application.~~

8
9 ~~23-92-309.—License fees.~~

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

18
19 ~~23-92-310.—Restricted out-of-state certificate and reciprocity.~~

20 ~~The Insurance Commissioner by regulation may prescribe rules allowing~~
21 ~~employee leasing firms domiciled in other states to obtain a restricted~~
22 ~~license for limited operations within the state and to grant licenses by~~
23 ~~reciprocity.~~

24
25 ~~23-92-311.—Renewal of license.~~

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

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

34
35 ~~23-92-312.—Issuance, refusal, suspension, or revocation of license—~~
36 ~~Grounds.~~

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

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

15
16 ~~23-92-313. Refusal, suspension, or revocation of license—Notice and~~
17 ~~hearing.~~

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

22
23 ~~23-92-314. Deceptive practices.~~

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

27
28 ~~23-92-315. Licensed employee leasing firms.~~

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

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

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

35 ~~(3) Ensure that all of its employees are covered by workers'~~
36 ~~compensation insurance provided in conformance with the laws of this state.~~

1 Such coverage may be provided through a policy or plan maintained by either
2 the employee leasing firm or the client; provided, however, for purposes of
3 risks insured pursuant to § 23-67-301 et seq., known as the Arkansas Workers'
4 Compensation Insurance Plan, the Insurance Commissioner is authorized to
5 promulgate such rules and regulations as he deems necessary to assure that
6 workers' compensation coverage is available to employees providing services
7 for a client;

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

13 (5) Not be vicariously liable for the liabilities of the client,
14 whether contractual or otherwise; provided that the client shall not be
15 vicariously liable for the liabilities of the employee leasing firm, whether
16 contractual or otherwise. Nothing herein shall limit any direct contractual
17 liability or any joint liability between the client and the employee leasing
18 firm; and

19 (6) Sponsor and maintain employee benefit and welfare plans for
20 its leased employees, provided that such plans, if limited to the employees
21 of the employee leasing firm, shall not be deemed to be multiple employer
22 plans or trusts within the meaning of applicable law. Nothing herein shall
23 require an employee leasing firm to provide comparable benefits to employees
24 located at different worksites.

25
26 ~~23-92-316. Prohibited conduct.~~

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

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

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

34 "This proposal is intended to provide information about the general terms
35 and conditions under which the above named firm will enter into an agreement
36 to provide human resource outsourcing services. Information contained in this

1 ~~proposal does not constitute advice on legal, tax, or insurance matters. For~~
2 ~~advice on such matters, you should consult with the appropriate licensed~~
3 ~~professional.”;~~

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

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

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

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

16 ~~(2) Advising a prospective client regarding insurance coverage;~~
17 ~~or~~

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

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

22 ~~(1) Soliciting prospective clients to enter into an employee~~
23 ~~leasing arrangement;~~

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

27 ~~(3) Evaluating collected information to ascertain the employee~~
28 ~~leasing firm’s risk and cost associated with serving a prospective client’s~~
29 ~~workforce;~~

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

33 ~~(5) Performing employer responsibilities as required by § 23-92-~~
34 ~~315.~~

35
36 /s/ R. Smith