

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 *As Engrossed: H3/18/03 H3/25/03 H3/27/03*

2 84th General Assembly

A Bill

3 Regular Session, 2003

HOUSE BILL 2223

4

5 By: Representative R. Smith

6 By: *Senators B. Johnson, Horn*

7

8

9

For An Act To Be Entitled

10

AN ACT TO REGULATE PROFESSIONAL EMPLOYER

11

ORGANIZATIONS; TO PROVIDE CERTAIN EXEMPTIONS FROM

12

REGISTRATION REQUIREMENTS FOR THESE

13

ORGANIZATIONS; TO REQUIRE A PROFESSIONAL *EMPLOYER*

14

ORGANIZATION TO MAINTAIN CERTAIN FINANCIAL

15

STANDARDS FOR THESE ORGANIZATIONS; TO DESIGNATE

16

CERTAIN RECORDS AS CONFIDENTIAL FOR

17

CONFIDENTIALITY; TO ALLOCATE RIGHTS, DUTIES AND

18

OBLIGATIONS UNDER PROFESSIONAL EMPLOYER

19

AGREEMENTS; TO REQUIRE WORKERS' COMPENSATION

20

COVERAGE; AND FOR OTHER PURPOSES.

21

22

Subtitle

23

AN ACT TO REGULATE PROFESSIONAL EMPLOYER

24

ORGANIZATIONS.

25

26

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

28

29 SECTION 1. Arkansas Code, Title 23, Chapter 92, is amended to add a

30 new subchapter to read as follows:

31

23-92-401. Title.

32

This subchapter may be cited as the "Arkansas Professional Employer

33

Organization Recognition and Licensing Act".

34

35

23-92-402. Definitions.

36

For purposes of this subchapter:



1 (a) “Client” means any person who enters into a coemployment
2 relationship as a coemployer with a professional employer organization;

3 (b) “Coemployer” means a professional employer organization or a
4 client of a professional employer organization;

5 (c) “Coemployment relationship” means:

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

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

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

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

22 (3) As between each client and a covered employee to which a
23 professional employer agreement applies, an employment relationship in which
24 each client is entitled to enforce the rights allocated to
25 the client by the agreement and this subchapter and is obligated to provide
26 and perform the employer obligations allocated to the client by the
27 professional employer agreement and this subchapter and in which the client
28 is responsible for any employer right or obligation not otherwise allocated
29 by the professional employer agreement or this subchapter;

30 (d) “Commissioner” means the Insurance Commissioner;

31 (e) “Controlling person” means:

32 (1) Any natural person who directly or indirectly possesses the
33 power to direct or cause the direction of the management or policies of any
34 professional employer organization, including:

35 (A) Direct or indirect control of ten percent (10%) or
36 more of an ownership interest bearing the right to participate in policy

1 making for the professional employer organization; or

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

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

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

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

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

16 (h) "Licensee" means a professional employer organization licensed
17 under this subchapter;

18 (i) "Person" means any individual, partnership, corporation, limited
19 liability company, association, or any legally recognized entity, however
20 formed;

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

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

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

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

32 (m)(1) "Professional employer services" means the service of entering
33 into a coemployment relationship under this subchapter in which at least a
34 majority of the employees providing services to a client or to a division or
35 work unit of a client are covered employees and in which:

36 (A) The arrangement is intended to be, or is, ongoing

1 rather than temporary in nature; and

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

5 (2) "Professional employer services" does not include services
6 performed by temporary employees or by persons determined to be independent
7 contractors with respect to the recipient;

8 (n)(1) "Temporary help services" means services consisting of a
9 person:

10 (A) Recruiting and hiring its own employees;

11 (B) Finding other organizations that need the services of
12 those employees;

13 (C) Assigning those employees to perform work at or for
14 the other organizations to support or supplement the other organizations'
15 workforces, or to provide assistance in special work situations such as, but
16 not limited to, employee absences, skill shortages, seasonal workloads, or to
17 perform special assignments or projects; and

18 (D) Customarily attempting to reassign the employees to
19 other organizations when they finish each assignment.

20 (2) "Temporary help services" shall not be deemed professional
21 employer services;

22 (o) "Employer service assurance organization" means an organization
23 licensed under § 23-92-415;

24 (p) "Professional employer organization service organization
25 affidavit" means an attestation or certification of a professional employer
26 organization service organization and any additional information that
27 conforms to the requirements in the rules and regulations as promulgated by
28 the commissioner.

29 (q)(1) "Transacting insurance" includes any of the following actions
30 by a professional employer organization or its representatives:

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

33 (B) Advising a prospective client regarding insurance
34 coverage; or

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

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

4 (A) Soliciting prospective clients to enter into a
5 professional employee agreement;

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

9 (C) Evaluating collected information to ascertain the
10 professional employer organization’s risk and cost associated with serving a
11 prospective client’s workforce;

12 (D) Informing a prospective client of the terms and
13 conditions under which the professional employer organization will enter into
14 a professional employer agreement; or

15 (E) Performing employer responsibilities as required by
16 this subchapter.

17
18 23-92-403. Relationship to other laws.

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

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

26 (b) Neither this subchapter nor any professional employer agreement
27 shall affect, modify, or amend any state, local, or federal licensing,
28 registration, or certification requirement applicable to any client or
29 covered employee.

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

33 (d) A professional employer organization shall not be deemed to engage
34 in any occupation, trade, profession, or other activity that is subject to
35 licensing, registration, or certification requirements, or is otherwise
36 regulated by a governmental entity, solely by entering into and maintaining a

1 coemployment relationship with a covered employee who is subject to this
2 subchapter or to regulations promulgated under this subchapter.

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

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

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

14 (f)(1) Applicants for licensing or a professional employer
15 organization licensed under this subchapter hereby authorize the Arkansas
16 Employment Security Division, the Workers' Compensation Commission, and the
17 Arkansas Insurance Department, or their successors, to release otherwise
18 confidential information to the other above named departments or commission
19 concerning the applicant or professional employer organization upon the
20 written request by the requesting division, department or commission.

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

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

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

36 (A) Arkansas Code, Title 11, Chapters 2 through 7, Chapter

1 10, and Chapter 12;

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

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

5 (D) The Arkansas Civil Rights Act of 1993, §§ 16-123-101
6 et seq.;

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

9 (F) Arkansas Code § 7-1-102 concerning voting time, § 16-
10 31-106 concerning jury duty, and § 21-4-101 concerning leave of absence for
11 public service.

12
13 23-92-404. Licensing and renewal.

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

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

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

23 (A) The legal name of the professional employer
24 organization and all other names under which the professional employer
25 organization conducts business;

26 (B) The address of the principal place of business of the
27 professional employer organization and the address of each office it
28 maintains in Arkansas;

29 (C) The professional employer organization's taxpayer or
30 employer identification number;

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

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

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

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

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

13 (ii) The financial statement under subdivision
14 (b)(1)(H)(i) of this section shall be prepared in accordance with generally
15 accepted accounting principles, and unless the professional employer
16 organization provides financial assurance as set forth in § 23-92-408(a)(2),
17 the financial statement shall be audited by an independent certified public
18 accountant licensed to practice in Arkansas or the state of domicile of the
19 professional employer organization.

20 (iii) A professional employer organization group may
21 submit combined or consolidated financial statements to meet the requirements
22 of this section.

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

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

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

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

36 (3)(A) Licensees under this subchapter shall have thirty (30)

1 days after the renewal date in which to renew their licenses and pay in
2 addition to the renewal fee under subdivision (d)(1) of this section, a late
3 fee not to exceed one thousand dollars (\$1,000).

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

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

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

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

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

20 (d) The commissioner shall provide a
21 copy of the order entered under subdivision (d)(3)(B)(ii)(a) of this section
22 to the Workers' Compensation Commission and the Arkansas Employment Security
23 Department, or their successors.

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

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

31 (f)(1) A professional employer organization is exempt from the
32 licensing requirements contained in §§ 23-92-304(a) through (e), 23-92-305,
33 23-92-306, and 23-92-308 if the professional employer organization:

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

36 (B) Is domiciled outside of Arkansas and is licensed or

1 registered as a professional employer organization in another state that has
2 the same or greater requirements than this subchapter;

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

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

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

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

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

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

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

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

24 (j) A person engaged in the business of providing professional
25 employer services shall be subject to licensing under this subchapter
26 regardless of its use of the name "professional employer organization",
27 "PEO", "staff leasing company", "licensed staff leasing company", "employee
28 leasing company", or any other name.

29
30 23-92-405. Controlling person.

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

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

35 (2) Has the education, managerial, or business experience to
36 successfully act as the controlling person of a professional employer

1 organization;

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

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

9 (c) The commissioner may prohibit a person found to qualify as a
10 controlling person under subdivision (a) of this section from exercising
11 control over the professional employer organization if the commissioner
12 subsequently finds that the person no longer qualifies under subsection (a)
13 of this section.

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

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

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

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

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

25 (D) Fraud, deceit, or misconduct in the establishment or
26 maintenance of self-insurance, whether health insurance or Workers'
27 Compensation insurance; or

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

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

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

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

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

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

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

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

14
15 23-92-406. Changes in control.

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

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

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

24 (b)(1) A person or entity that seeks to purchase or acquire control of
25 an entity licensed under this subchapter shall first apply to the
26 commissioner for a certificate of approval for the proposed change of
27 ownership unless the licensed entity to be acquired is a publicly-traded
28 entity, in which event the acquiring entity shall apply to the commissioner
29 for a certificate of approval for the proposed change of ownership at the
30 time the licensed entity publishes public notice of the intended purchase or
31 acquisition of control.

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

35 (c)(1) Any existing stockholder or partner who intends to acquire
36 control of an existing entity that is licensed under this subchapter shall

1 first apply to the commissioner for a certificate of approval for the
2 proposed change of ownership.

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

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

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

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

20 (e) The commissioner shall waive the requirements of subsection (d) of
21 this section and shall automatically approve the proposed change in ownership
22 if:

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

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

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

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

35
36 23-92-407. Fees.

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

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

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

11 (d) Upon the filing of each request for a change in ownership or
12 controlling person filed under this subchapter, a professional employer
13 organization shall pay a change in ownership fee of five hundred dollars
14 (\$500).

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

18
19 23-92-408. Financial assurance required.

20 (a) Each professional employer organization shall maintain:

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

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

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

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

33 (i) Violate the provisions of this subchapter or
34 violate rules, regulations, or orders lawfully promulgated by the
35 commissioner under this subchapter; or

36 (ii) Fail to pay any wages due under any contract

1 made by the licensee in the conduct of its business subject to this
2 subchapter.

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

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

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

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

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

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

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

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

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

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

36 (2) All claims shall be assignable, and the assignee shall be

1 entitled to the same remedies upon the bond of the licensee as the aggrieved
2 person would have been entitled if the claim had not been assigned.

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

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

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

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

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

19
20 23-92-409. Relationships defined.

21 (a)(1) Except as specifically provided in this subchapter, the
22 coemployment relationship between the client and the professional employer
23 organization, and between each coemployer and each covered employee, shall be
24 governed by the professional employer agreement.

25 (2) Neither this subchapter nor any professional employer
26 agreement shall:

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

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

32 (C) Create any new or additional enforcement right of a
33 covered employee against a professional employer organization not
34 specifically allocated to the professional employer organization in the
35 professional employer agreement or under this subchapter.

36 (b) Except as specifically provided in this subchapter or in the

1 professional employer agreement, in each coemployment relationship:

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

5 (2)(A) The professional employer organization shall be entitled
6 to exercise only the rights, and obligated to perform only the duties and
7 responsibilities, specifically required by this subchapter or by the
8 professional employer agreement.

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

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

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

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

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

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

25 (C) Withhold, collect, report, and remit payroll-related
26 and employment taxes; and

27 (D) To the extent the professional employer organization
28 has assumed responsibility in the professional employer agreement, make
29 payments for employee benefits for covered employees;

30 (3) The professional employer organization shall retain the
31 authority to hire, terminate, and discipline the covered employees, unless
32 otherwise agreed; and

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

1 organization.

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

8 (2) The professional employer agreement shall also
9 provide that, if requested by the client at or after the termination of the
10 agreement, the professional employer organization shall provide the records
11 maintained under subdivision (c)(4)(B)(1) to the client.

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

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

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

27 (ii) This section does not require the disclosure of
28 information to a client or former client concerning another client or former
29 client of the professional employer organization.

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

34 (d) With respect to each professional employer agreement entered into
35 by a professional employer organization, each professional employer
36 organization shall provide written notice to each covered employee affected

1 by the agreement of the general nature of the coemployment relationship
2 between and among the professional employer organization, the client, and any
3 covered employee.

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

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

17 (f)(1) Either a client or a professional employer organization may
18 sponsor retirement and welfare benefit plans for its covered employees.

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

23 (3) For purposes of §§ 23-86-201 through 23-86-204 and §§ 23-86-
24 207 through 23-86-209, with respect to a health benefit plan sponsored by a
25 professional employer organization, a professional employer organization
26 shall be considered the employer of all of its covered employees, and all
27 covered employees of one (1) or more clients participating in a health
28 benefit plan sponsored by a single professional employer organization shall
29 be considered employees of the professional employer organization.

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

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

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

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

3 (g) Except to the extent otherwise provided in a professional employer
4 agreement:

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

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

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

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

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

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

32 (j) A licensed professional employer organization shall be deemed an
33 employer of the covered employees and shall perform the following employer
34 responsibilities in conformity with all applicable federal and state laws and
35 regulations to:

36 (1) Pay wages and collect, report, and pay employment taxes from

1 its own accounts;

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

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

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

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

14 (4) Be entitled and to entitle the client, together as joint
15 employers, to the exclusive remedy under § 11-9-105, under both the Workers'
16 Compensation and employer's liability provisions of a Workers' Compensation
17 policy or plan that either party has secured within the meaning of § 11-9-
18 105;

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

21 (B) However, the client shall not be vicariously liable
22 for the liabilities of the professional employer organization, whether
23 contractual or otherwise.

24 (C) This section shall limit any direct contractual
25 liability or any joint liability between the client and the professional
26 employer organization.

27
28 23-92-410. Issuance, refusal, suspension, or revocation of license -
29 grounds and procedure.

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

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

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

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

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

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

15
16 23-92-411. Deceptive practices.

17 (a) No professional employer organization shall:

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

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

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

29 (3) Enter into a professional employer agreement without a
30 written provision signed by the client stating that the client is responsible
31 for ensuring with the assistance of a licensed insurance producer that any
32 subcontractor of the client has Workers’ Compensation coverage as required by
33 law;

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

36 (5) Use the name or title “licensed employee leasing company”,

1 “employee leasing company”, “employee leasing company group”, “professional
2 employer”, “professional employer organization”, “PEO”, “controlling person”,
3 or words that would tend to lead one to believe that the person or entity is
4 licensed under this subchapter, when the person or entity has not been
5 licensed under this subchapter;

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

8 (7) Fail to maintain Workers’ Compensation insurance as required
9 by this subchapter;

10 (8) Conduct business without an active license;

11 (9) Transfer or attempt to transfer a license issued under this
12 subchapter;

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

15 (11) Fail to notify the commissioner, in writing, of any change
16 of the primary business address or the addresses of any of the licensee’s
17 offices in the state;

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

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

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

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

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

31
32 23-92-412. Penalties.

33 (a) Any person who engages in the business of a professional employer
34 organization or acts as a professional employer organization without first
35 procuring a license, or who otherwise violates any of the provisions under
36 this subchapter shall be liable for a civil penalty of not less than two

1 hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) for
2 each day that it engages in the business of providing professional employer
3 services without a license.

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

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

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

18
19 23-92-413. Nondisclosure of proprietary information.

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

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

27 (b)(9)(A).

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

32 (C) The commissioner shall give notice in writing to any
33 professional employer organization or professional employer organization
34 group whose client lists or other material that the commissioner deems to be
35 "proprietary" are being sought under the Freedom of Information Act of 1967,
36 § 25-19-101 et seq.

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

6
7 23-92-414. Employer service assurance organization affidavit.

8 (a) The Insurance Commissioner may, by rule and regulation, provide
9 for the acceptance of a employer service assurance organization affidavit
10 provided on behalf of a professional employer organization in lieu of the
11 requirements under §§ 23-92-404 through 23-92-406 and § 23-92-408, and the
12 fees provided for in § 23-92-407.

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

16
17 23-92-415. Licensing of employer service assurance organizations.

18 (a)(1) No employer service assurance organization shall provide any
19 service relating to the regulation of professional employer organizations,
20 and no state agency, professional employer organization, or insurer shall
21 utilize the services of the organization for those purposes, unless the
22 organization has obtained a license from the commissioner.

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

26 (b) No employer service assurance organization shall refuse to supply
27 any services for which it is licensed in Arkansas to any state agency,
28 professional employer organization, or insurer authorized to do business in
29 Arkansas and offering to pay the fair and usual compensation for the
30 services.

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

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

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

36 (iii) Any other rules or regulations governing the

1 conduct of its business;

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

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

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

8 (E)(i) Financial assurance acceptable to the commissioner,
9 including:

10 (a)(1) A surety bond issued by a
11 corporate surety in favor of a trust, maintained at a national bank, with the
12 bank serving as trustee in an amount of not less than one million dollars
13 (\$1,000,000), or an equivalent amount of cash or other security acceptable to
14 the commissioner, on behalf of each professional employer organization for
15 which the employer service assurance organization provides an affidavit under
16 § 23-92-414.

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

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

29 (ii) The one hundred thousand dollar (\$100,000)
30 surety bond shall be conditioned so that any professional employer
31 organization for which the employer service assurance organization provides
32 an affidavit under § 23-92-414 and each member, employee, shareholder, or
33 officer or a person, firm partnership, corporation, or association operating
34 as an agent of the professional employer organization will not violate rules,
35 regulations, or orders lawfully promulgated by the commissioner under §§ 23-
36 92-401 through 23-92-419 or fail to pay any wages due under any contract made

1 by the professional employer organization in the conduct of its business
2 under §§ 23-92-401 through 23-92-419;

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

5 (G) Any other relevant information and documents that the
6 commissioner may require.

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

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

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

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

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

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

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

29 (C) Submission of information which may be required by the
30 commissioner.

31
32 23-92-416. Employer service assurance organizations – Prohibited
33 activities.

34 (a) No employer service assurance organization shall attempt to
35 monopolize or to combine or conspire with any other person to monopolize any
36 market or make any arrangement with any professional employer organization,

1 employer service assurance organization, or other person that has the purpose
2 or effect of unreasonably restraining trade or of substantially lessening
3 competition in the business of professional employer organization services or
4 insurance.

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

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

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

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

16 (4) Prevent any professional employer organization from acting
17 independently.

18
19 23-92-417. Employer service assurance organization – Permitted
20 activities.

21 Any employer service assurance organization, in addition to other
22 activities permitted, may:

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

24 (2) Develop and administer standards, procedures and programs of
25 accreditation and financial assurance and other services for professional
26 employer organizations and state agencies, unless otherwise prohibited by
27 law; and

28 (3) Furnish any other services not prohibited by this
29 subchapter.

30
31 23-92-418. Filing of information.

32 (a) Each employer service assurance organization shall file with the
33 commissioner each affidavit and related document and information under § 23-
34 92-414 or § 23-92-419(b) on or before the date the affidavit or related
35 document and information are otherwise due, as prescribed by the Insurance
36 Commissioner.

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

3
4 23-92-419. Rules and regulations.

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

8 (2) The commissioner shall adopt rules and regulations under
9 this subchapter in compliance with the Arkansas Administrative Procedure Act,
10 § 25-15-201 et seq.

11 (b)(1) The commissioner may adopt reasonable rules for use by employer
12 service assurance organizations to record and report to the commissioner
13 information determined by the commissioner to be necessary or appropriate for
14 the administration of this subchapter and for the effectuation of its
15 purposes.

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

19
20 SECTION 3. Arkansas Code § 23-61-401 (1)(E), concerning license fees
21 for rate service organizations, is amended to read as follows:

22 (E) Issuance of original license for rate service organizations
23 and employer service assurance organizations.....500.00

24
25 SECTION 4. Arkansas Code § 23-61-401(2)(C), concerning fees for annual
26 continuation of licenses for rate service organizations is amended to read as
27 follows:

28 Rate service organizations and employer service assurance
29 organizations, annual continuation of
30 license.....100.00

31
32 SECTION 5. Arkansas Code § 11-9-408(c) is amended to read as follows:

33 (c) Coverage. (1) No policy or contract of insurance shall be issued
34 against liability under this chapter unless the policy or contract covers the
35 entire liability of the employer. Split coverage whereby some employees of an
36 employer are insured by one carrier and other employees are insured by

1 another carrier, or by the Arkansas Workers' Compensation Insurance Plan, §
2 23-67-301 et seq., or a plan of self-insurance, is expressly prohibited
3 except for:

4 (A) A policy issued in accordance with ~~§ 23-92-315(3)~~ §
5 23-94-409 so long as all employees performing services for a client are
6 covered under the same policy, contract, or plan; or

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

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

17
18 SECTION 6. Arkansas Code § 19-6-301(172) concerning certain special
19 reveunes enumerated, is amended to read as follows:

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

27
28 SECTION 7. Arkansas Code § 23-67-304(b), concerning Workers'
29 Compensation Insurance Plans, is amended to read as follows:

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

34
35 SECTION 8. Arkansas Code § 23-86-303(9), concerning definitions for
36 group health insurance availability and portability laws, is amended to read

1 as follows:

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

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

11

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

14 ~~23-92-301. Short title.~~

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

17

18 ~~23-92-302. Definitions.~~

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

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

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

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

27 ~~(ii) Employer responsibilities, including the right~~
28 ~~of direction and control of the employees, are shared by the employee leasing~~
29 ~~firm and the recipient.~~

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

33 ~~(3)(A) "Employee leasing firm" means any person engaged in~~
34 ~~providing the services of employees pursuant to one (1) or more employee~~
35 ~~leasing arrangements.~~

36 ~~(B) For the purposes of this subchapter, unless otherwise~~

1 stated, the term “employee leasing firm” shall also mean and refer to an
2 “employee leasing firm group”; and

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

9
10 ~~23-92-303. Commissioner — Powers and duties.~~

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

19
20 ~~23-92-304. Exemptions.~~

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

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

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

26
27 ~~23-92-305. License — Penalties.~~

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

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

35 ~~(B) An employee leasing firm group may satisfy the~~
36 ~~reporting and financial assurance requirements of this subchapter on a~~

1 ~~consolidated basis.~~

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

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

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

18
19 ~~23-92-306. License — Application.~~

20 ~~Every applicant for an initial employee leasing firm license and every~~
21 ~~applicant for a renewal license shall file with the Insurance Commissioner a~~
22 ~~completed application on a form prescribed and furnished by the commissioner.~~
23

24 ~~23-92-307. Employee leasing firm license — Financial assurance~~
25 ~~required.~~

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

30 ~~(2) The terms and conditions of the bond shall be approved by~~
31 ~~the Insurance Commissioner.~~

32 ~~(3) The bond shall be conditioned that the licensee and each~~
33 ~~member, employee, shareholder, or officer of a person, firm, partnership,~~
34 ~~corporation, or association operating as an agent of the licensee will not~~
35 ~~violate the provisions of this subchapter or violate rules, regulations, or~~
36 ~~orders lawfully promulgated by the commissioner pursuant to this subchapter~~

1 ~~or fail to pay any wages due under any contract made by the licensee in the~~
2 ~~conduct of its business subject to this subchapter.~~

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

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

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

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

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

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

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

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

36 ~~(e) In lieu of the bond requirement set forth in subsection (a) of~~

1 ~~this section, an employee leasing firm may provide a financial statement~~
2 ~~prepared by an independent certified public accountant in accordance with~~
3 ~~generally accepted accounting principles as of a date within the six (6)~~
4 ~~months prior to the date of application or renewal, which statement shows a~~
5 ~~minimum net worth of at least one hundred thousand dollars (\$100,000).~~

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

10
11 ~~23-92-308. Investigation of applicant by commissioner.~~

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

17
18 ~~23-92-309. License fees.~~

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

27
28 ~~23-92-310. Restricted out of state certificate and reciprocity.~~

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

33
34 ~~23-92-311. Renewal of license.~~

35 ~~(a) Every license issued pursuant to this subchapter shall remain in~~
36 ~~force for one (1) year from the date of issue, unless the license has been~~

1 ~~revoked pursuant to the provisions of this subchapter. Commencing on and~~
2 ~~after June 1, 1999, annual renewal applications shall be filed with the~~
3 ~~Insurance Commissioner by the employee leasing firms or groups no later than~~
4 ~~July 1 annually.~~

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

7
8 ~~23-92-312. Issuance, refusal, suspension, or revocation of license—~~
9 ~~Grounds.~~

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

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

24
25 ~~23-92-313. Refusal, suspension, or revocation of license—Notice and~~
26 ~~hearing.~~

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

31
32 ~~23-92-314. Deceptive practices.~~

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

36

1 ~~23-92-315. Licensed employee leasing firms.~~

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

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

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

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

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

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

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

34
35 ~~23-92-316. Prohibited conduct.~~

36 ~~(a) No employee leasing firm or other individual, association,~~

1 ~~company, firm, partnership, or corporation who leases employees may:~~

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

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

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

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

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

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

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

25 ~~(2) Advising a prospective client regarding insurance coverage;~~
26 ~~or~~

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

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

31 ~~(1) Soliciting prospective clients to enter into an employee~~
32 ~~leasing arrangement;~~

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

36 ~~(3) Evaluating collected information to ascertain the employee~~

1 ~~leasing firm's risk and cost associated with serving a prospective client's~~
2 ~~workforce;~~

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

6 ~~(5) Performing employer responsibilities as required by § 23-92-~~
7 ~~315.~~

8

9

/s/ R. Smith

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