



# House of Representatives

**File No. 759**

General Assembly

February Session, 2008

**(Reprint of File No. 195)**

Substitute House Bill No. 5113  
As Amended by House Amendment Schedule  
"A"

Approved by the Legislative Commissioner  
May 1, 2008

**AN ACT CONCERNING PROFESSIONAL EMPLOYER  
ORGANIZATIONS AND EMPLOYEE MISCLASSIFICATION.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) As used in this section  
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Client" means any person who, as an employer, enters into a  
4 professional employer agreement with a professional employer  
5 organization;

6 (2) "Coemployment relationship" means an ongoing relationship,  
7 rather than a temporary or project-specific relationship, in which the  
8 rights, duties and obligations of an employer are allocated between a  
9 professional employer organization and a client pursuant to a  
10 professional employer agreement as provided in sections 2 to 6,  
11 inclusive, of this act;

12 (3) "Covered employee" means an individual who (A) is an  
13 employee of a client that has a coemployment relationship with a

14 professional employer organization, (B) has received written notice of  
15 the coemployment, and (C) has received a written summary of the  
16 obligations and responsibilities of the client and the professional  
17 employer organization pursuant to the professional employer  
18 agreement;

19 (4) "Department" means the Labor Department;

20 (5) "Commissioner" means the Labor Commissioner;

21 (6) "Professional employer organization group" means two or more  
22 professional employer organizations that are majority-owned or  
23 commonly controlled by the same entity, parent entity or controlling  
24 persons;

25 (7) "Professional employer agreement" means a written contract by  
26 and between a client and a professional employer organization;

27 (8) "Person" means any individual, partnership, corporation, limited  
28 liability company, association or other legal entity;

29 (9) "Temporary help service" has the same meaning as provided in  
30 section 31-129 of the general statutes;

31 (10) "Professional employer organization" means any person  
32 engaged in the business of providing professional employer services,  
33 regardless of whether such person uses the term or conducts business  
34 as a professional employer organization, staff leasing company,  
35 registered staff leasing company, employee leasing company,  
36 administrative employer or any other name. Professional employer  
37 organization does not include:

38 (A) Arrangements in which a person, other than a person whose  
39 principal business activity is entering into professional employer  
40 arrangements, shares employees with a commonly-owned company  
41 within the meaning of Sections 414(b) and (c) of the Internal Revenue  
42 Code of 1986, or any subsequent corresponding internal revenue code  
43 of the United States, as from time to time amended;

44 (B) Independent contractor arrangements in which a person  
45 assumes responsibility for the product produced or service performed  
46 by such person or such person's agents and retains and exercises  
47 primary direction and control over the work performed by the  
48 individuals whose services are supplied under such arrangements; or

49 (C) Temporary help services;

50 (11) "Professional employer services" means entering into  
51 coemployment relationships in which all or a majority of the  
52 employees providing services to a client or to a division or work unit  
53 of a client are covered employees; and

54 (12) "Registrant" means a professional employer organization  
55 registered under section 3 of this act.

56 Sec. 2. (NEW) (*Effective January 1, 2009*) (a) Nothing in this section or  
57 sections 3 to 6, inclusive, of this act or in any professional employer  
58 agreement shall:

59 (1) Diminish existing rights between covered employees and a client  
60 existing prior to the effective date of the professional employer  
61 agreement; or

62 (2) Create any new or additional enforceable right of a covered  
63 employee against a professional employer organization that is not  
64 specifically provided by the professional employer agreement or in  
65 this section or sections 3 to 6, inclusive, of this act.

66 (b) (1) A covered employee who is required to be licensed,  
67 registered or certified under any provision of the general statutes shall  
68 be deemed to be solely an employee of the client for purposes of any  
69 such license, registration or certification requirement.

70 (2) A professional employer organization or professional employer  
71 organization group shall not be deemed to engage in any occupation,  
72 trade, profession or other activity that is subject to licensing,  
73 registration or certification requirements or is otherwise regulated by a

74 governmental entity solely by entering into and maintaining a  
75 coemployment relationship.

76 (c) For purposes of determination of tax credits and other economic  
77 incentives provided by this state or other governmental entity and  
78 based on employment, covered employees of the client shall be  
79 deemed employees solely of the client.

80 (d) A client company's status or certification as a small, minority-  
81 owned, disadvantaged or woman-owned business enterprise or as a  
82 historically underutilized business shall not be affected by the client  
83 company entering into an agreement with a professional employer  
84 organization or using the services of a professional employer  
85 organization.

86 Sec. 3. (NEW) (*Effective January 1, 2009*) (a) Subject to the provisions  
87 of subsection (e) of this section, no person shall provide, advertise or  
88 otherwise hold itself out as providing professional employer services  
89 in this state unless such person is registered as a professional employer  
90 organization. Any person seeking initial registration as a professional  
91 employer organization shall apply to the Labor Commissioner on a  
92 form prescribed by the commissioner. Such application shall include:

93 (1) The name or names under which the applicant will conduct  
94 business and, if applicable, under which the applicant conducted  
95 business prior to the date of application;

96 (2) The address of the principal place of business of the applicant  
97 and the address of each office it maintains or will maintain in this state;

98 (3) The applicant's federal and state taxpayer and employer  
99 identification number;

100 (4) A list by jurisdiction of any name under which the applicant  
101 operated in the five years preceding the date of application, including  
102 any alternative names, names of predecessors, the name of the  
103 immediate successor business entity and, if known, any other

104 successor business entities;

105 (5) A statement of ownership, that includes the name and evidence  
106 of the business experience of any person that, individually or acting in  
107 concert with one or more other persons, owns or controls or will  
108 control, directly or indirectly, twenty-five per cent or more of the  
109 equity interest of the applicant;

110 (6) A statement of management that includes the name and  
111 evidence of the business experience of any person who serves or will  
112 serve as president, chief executive officer or otherwise has or will have  
113 the authority to act as senior executive officer of the applicant; and

114 (7) A financial statement setting forth the financial condition of the  
115 applicant in accordance with this subdivision.

116 (A) Except as provided in subparagraph (B) of this subdivision, a  
117 professional employer organization or professional employer  
118 organization group that conducted business prior to January 1, 2009,  
119 shall submit the most recent audit of the professional employer  
120 organization or professional employer organization group that was  
121 conducted no earlier than thirteen months prior to the date of  
122 application.

123 (B) If an applicant has not had sufficient operating history to have  
124 audited financial statements based on at least twelve months of  
125 operating history, the applicant shall submit a financial statement that  
126 sets forth the financial condition of the professional employer  
127 organization and is prepared pursuant to generally accepted  
128 accounting principles by an independent certified public accountant  
129 licensed to do business in the state who attests that (i) it is the  
130 applicant's most recent financial statement, (ii) he reviewed the  
131 financial statement within six months of the registration, (iii) the  
132 applicant is not delinquent in the payment of state or federal taxes, and  
133 (iv) the applicant meets the financial capacity requirements of section 4  
134 of this act.

135 (C) All information obtained from a professional employer  
136 organization or professional employer organization group under this  
137 subdivision shall be subject to disclosure in accordance with the  
138 provisions of chapter 14 of the general statutes.

139 (b) (1) Each professional employer organization operating within  
140 this state on January 1, 2009, shall submit its initial registration not  
141 later than March 1, 2009. Such initial registration shall be valid until  
142 one hundred eighty days after the professional employer  
143 organization's first completed fiscal year that is more than one year  
144 after March 1, 2009. Each professional employer organization or  
145 professional employer organization group shall file with the  
146 commissioner the beginning and ending date of each professional  
147 employer organization or professional employer organization group's  
148 fiscal year and notify and file with the commissioner any change to the  
149 beginning and ending date of such fiscal year.

150 (2) Each professional employer organization not operating within  
151 this state as of January 1, 2009, shall complete its initial registration  
152 prior to commencement of operations within this state.

153 (c) A registered professional employer organization may apply for  
154 renewal of its registration annually by submitting to the commissioner,  
155 not later than one hundred eighty days after the end of the  
156 professional employer organization's or professional employer  
157 organization group's fiscal year, (1) an audit for the preceding fiscal  
158 year, and (2) notice of any changes in the information provided in such  
159 registrant's immediately preceding application for initial registration  
160 or renewal. An applicant may apply for an extension with the  
161 department, but any such request shall be accompanied by a letter  
162 from the auditor stating the reasons for the delay and the anticipated  
163 audit completion date. The financial statement shall be prepared in  
164 accordance with generally accepted accounting principles and audited  
165 by an independent certified public accountant licensed to practice in  
166 the jurisdiction in which such accountant is located, and shall be  
167 without qualification as to any increase in going concern status of the

168 professional employer organization.

169 (d) Professional employer organizations in a professional employer  
170 organization group may satisfy the reporting and financial  
171 requirements of this section and section 4 of this act on a combined or  
172 consolidated basis provided each member of the professional  
173 employer organization group guarantees the obligations under  
174 sections 2 to 6, inclusive, of this act of each other member of the  
175 professional employer organization group. In the case of a professional  
176 employer organization group that submits a combined or consolidated  
177 audited financial statement, including entities that are not professional  
178 employer organizations or that are not in the professional employer  
179 organization group, the controlling entity of the professional employer  
180 organization group under the consolidated or combined statement  
181 shall guarantee the obligations of the professional employer  
182 organization in the professional employer organization group. Each  
183 professional employer organization or professional employer  
184 organization group shall notify the commissioner of the name and  
185 address of such controlling entity.

186 (e) (1) The commissioner may issue a professional employer  
187 organization a limited registration if such professional employer  
188 organization provides evidence, on a form prescribed by the  
189 commissioner, that it:

190 (A) Is domiciled outside this state and is licensed or registered as a  
191 professional employer organization in another state;

192 (B) Does not maintain an office in this state or directly solicit clients  
193 located or domiciled within this state; and

194 (C) Does not have more than fifty covered employees employed or  
195 domiciled in this state at any particular time;

196 (2) A limited registration shall be valid for one year and shall be  
197 renewed annually at the completion of the registrant's fiscal year. Each  
198 professional employer organization or professional employer

199 organization group shall pay a limited registration fee, established by  
200 the commissioner when the registration is filed or renewed, not to  
201 exceed one thousand dollars and a renewal fee shall not exceed one  
202 thousand dollars;

203 (3) If a professional employer organization or professional employer  
204 organization group seeks to file a limited registration with the  
205 commissioner, the professional employer organization or professional  
206 organization group shall provide the commissioner with sufficient  
207 information and documentation that the professional employer  
208 organization or professional employer organization group qualifies for  
209 a limited registration.

210 (f) The department shall maintain a list of professional employer  
211 organizations registered under this section.

212 (g) The commissioner shall charge a fee on application or renewal  
213 for registration as a professional employer organization, provided an  
214 initial registration fee shall not exceed one thousand five hundred  
215 dollars and a renewal fee shall not exceed one thousand dollars.

216 (h) The registrant shall notify the commissioner of the address of the  
217 principal place of business of the registrant and the address of each  
218 office it maintains or proposes to maintain in this state.

219 (i) The applicant or registrant shall notify the commissioner of any  
220 change of address for any location, as described in subsection (h) of  
221 this section no later than five working days after such change.

222 Sec. 4. (NEW) (*Effective January 1, 2009*) (a) Except as provided in  
223 subsection (b) of this section or section 3 of this act, each professional  
224 employer organization or, collectively, each professional employer  
225 organization group shall:

226 (1) Maintain a minimum of one hundred fifty thousand dollars in  
227 working capital, as defined by generally accepted accounting  
228 principles, as reflected in the financial statements submitted to the

229 department with the initial registration and each annual renewal. A  
230 professional employer organization or professional employer  
231 organization group with less than one hundred fifty thousand dollars  
232 in working capital at renewal shall have one hundred eighty days to  
233 eliminate the deficiency. During such one hundred eighty days, the  
234 professional employer organization or professional employer  
235 organization group shall submit quarterly financial statements to the  
236 department accompanied by the attestation of the chief executive  
237 officer that all wages, taxes, workers' compensation premiums and  
238 employee benefits have been paid by the professional employer  
239 organization or members of the professional employer organization  
240 group; or

241 (2) Provide a bond, irrevocable letter of credit or securities with a  
242 minimum market value of one hundred fifty thousand dollars to the  
243 department. Such bond shall be held by a depository designated by the  
244 commissioner securing payment by the professional employer  
245 organization of all taxes, wages, benefits or other entitlement due to or  
246 with respect to covered employees, if the professional employer  
247 organization does not make such payments when due.

248 (b) The commissioner may accept an affidavit or certification of a  
249 bonded, independent and qualified assurance organization approved  
250 by the commissioner to certify qualifications of a professional  
251 employer organization in lieu of the requirements of this section.

252 (c) The provisions of subsections (a) and (b) of this section shall not  
253 apply to a professional employer organization that has been issued a  
254 limited registration under subsection (e) of section 3 of this act.

255 Sec. 5. (NEW) (*Effective January 1, 2009*) (a) Except as specifically  
256 provided in sections 2 to 6, inclusive, of this act, the allocation of  
257 rights, duties and obligations of a professional employer organization  
258 and a client shall be determined by the professional employer  
259 agreement.

260 (b) Each professional employer agreement shall:

261 (1) Provide for the (A) allocation of employer rights and obligations  
262 between the clients and the professional employer organization with  
263 respect to the covered employees, and (B) professional employer  
264 organization and the client to assume the responsibilities required by  
265 sections 2 to 6, inclusive, of this act; and

266 (2) Require the professional employer organization (A) to pay  
267 wages to covered employees, (B) to withhold, collect, report and remit  
268 payroll-related and unemployment taxes, and (C) to the extent the  
269 professional employer organization has assumed responsibility in the  
270 professional employer agreement, to make payment for employee  
271 benefits for covered employees.

272 (c) Except as otherwise expressly provided in the applicable  
273 professional employer agreement:

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

276 (2) A client shall be solely responsible for directing, supervising,  
277 training and controlling the work of covered employees with respect to  
278 the business activities of the client and solely responsible for the acts,  
279 errors or omissions of covered employees with regard to such  
280 activities;

281 (3) A client shall not be liable for the acts, errors or omissions of a  
282 professional employer organization or of any covered employee of the  
283 client when such covered employee is acting under the express  
284 direction and control of the professional employer organization;

285 (4) A professional employer organization shall not be liable for the  
286 acts, errors or omissions of a client or of any covered employee of the  
287 client when such covered employee is acting under the express  
288 direction and control of the client; and

289 (5) A covered employee is not, solely as the result of being a covered  
290 employee of a professional employer organization, an employee of the

291 professional employer organization for purposes of general liability  
292 insurance, fidelity bonds, surety bonds, employer's liability which is  
293 not covered by workers' compensation and employer's liability  
294 insurance carried by the professional employer organization unless the  
295 covered employee is included by specific reference in the professional  
296 employer agreement and applicable prearranged employment  
297 contract, insurance contract or bond.

298 Sec. 6. (NEW) (*Effective January 1, 2009*) (a) An applicant for  
299 registration or a registered professional employer organization or  
300 controlling person of an applicant or a registered professional  
301 employer organization shall be subject to disciplinary action pursuant  
302 to subsection (b) of this section, if such applicant registrant or  
303 controlling person:

304 (1) Wilfully violates any provision of sections 2 to 5, inclusive, of  
305 this act;

306 (2) Is convicted of a crime that relates to (A) the operation of a  
307 professional employer organization or professional employer  
308 organization group, (B) fraud or deceit, or (C) the ability of the  
309 professional employer organization or professional employer  
310 organization group or a controlling person of a professional employer  
311 organization or professional employer organization group to operate a  
312 professional employer organization or professional employer  
313 organization group;

314 (3) Knowingly makes a material misrepresentation to the  
315 department or other governmental agency;

316 (4) Misappropriates any funds of a client employer; or

317 (5) Uses fraudulent or coercive practices to obtain or retain business  
318 or demonstrates gross financial irresponsibility.

319 (b) Upon finding, after notice and opportunity for hearing, that an  
320 applicant for registration or a registered professional employer

321 organization or a controlling person of an applicant or registered  
322 professional employer organization violated one or more provisions of  
323 subsection (a) of this section, the commissioner may:

324 (1) Deny any applications for registration;

325 (2) Revoke, restrict or refuse to renew a registration;

326 (3) Impose an administrative penalty in an amount not to exceed  
327 one thousand dollars for each material violation;

328 (4) Place the professional employer organization or controlling  
329 person of a professional employer organization on probation for a  
330 period to be determined by the commissioner, subject to reasonable  
331 conditions specified by the commissioner; or

332 (5) Issue a cease and desist order.

333 (c) In addition to the penalties provided in this section, any  
334 professional employer organization or professional employer  
335 organization group or officer or agent of a professional employer  
336 organization or professional employer organization group who  
337 violates any provision of sections 1 to 5, inclusive, of this act shall be  
338 liable to the Labor Department for a civil penalty of three hundred  
339 dollars for each violation.

340 (d) The Attorney General, upon complaint of the Labor  
341 Commissioner, shall institute a civil action to recover the penalties  
342 provided for under subsections (b) and (c) of this section. Any amount  
343 recovered shall be deposited in the General Fund and credited to the  
344 separate, nonlapsing appropriation to the Labor Department for other  
345 current expenses and may be used by the Labor Department to enforce  
346 the provisions of sections 2 to 6, inclusive, of this act.

347 (e) Any registration or renewal fees collected pursuant to section 3  
348 of this act shall be deposited in the General Fund and credited to the  
349 separate, nonlapsing appropriation to the Labor Department for other  
350 current expenses and may be used by the Labor Department for

351 administration costs for purposes of sections 2 to 6, inclusive, of this  
352 act.

353 Sec. 7. (NEW) (*Effective July 1, 2008*) Nothing in sections 1 to 6,  
354 inclusive, of this act shall operate to eliminate or diminish an employee  
355 protection or employer responsibility provided by title 31 of the  
356 general statutes or any regulation or policy adopted by the Labor  
357 Department pursuant thereto, or the Labor Department's ability to  
358 enforce those provisions.

359 Sec. 8. (NEW) (*Effective from passage*) On or before July 1, 2009, the  
360 commissioner may adopt regulations, in accordance with chapter 54 of  
361 the general statutes, to implement and administer sections 1 to 7,  
362 inclusive, of this act, which shall include, but not be limited to:

363 (1) Establishing guidelines for the electronic filing of applications,  
364 documents, reports and other filings by a bonded, independent and  
365 qualified assurance organization approved by the commissioner which  
366 may satisfy the filing requirements of sections 3 and 4 of this act;

367 (2) Establishing criteria for notice and written summaries to covered  
368 employees of the professional employer organization arrangement;

369 (3) Requiring specific notice as to whether all or only a part of a  
370 client's employees are covered employees; and

371 (4) Requiring notice of who is the controlling entity of a professional  
372 employer organization or professional employer organization group.

373 Sec. 9. (NEW) (*Effective July 1, 2008*) (a) There is established a joint  
374 enforcement commission on employee misclassification. The  
375 commission shall consist of the Labor Commissioner, the  
376 Commissioner of Revenue Services, the chairperson of the Workers'  
377 Compensation Commission, the Attorney General and the Chief State's  
378 Attorney, or their designees.

379 (b) The joint enforcement commission on employee misclassification  
380 shall meet not less than four times each year. The task force shall

381 review the problem of employee misclassification by employers for the  
 382 purposes of avoiding their obligations under state and federal labor,  
 383 employment and tax laws. The commission shall coordinate the civil  
 384 prosecution of violations of state and federal laws as a result of  
 385 employee misclassification and shall report any suspected violation of  
 386 state criminal statutes to the Chief State's Attorney or the State's  
 387 Attorney serving the district in which the violation is alleged to have  
 388 occurred.

389 (c) On or before February 1, 2010, and annually thereafter, the  
 390 commission shall report, in accordance with section 11-4a of the  
 391 general statutes, to the Governor and the joint standing committee of  
 392 the General Assembly having cognizance of matters relating to labor.  
 393 The report shall summarize the commission's actions for the preceding  
 394 calendar year and include any recommendations for administrative or  
 395 legislative action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>January 1, 2009</i>	New section
Sec. 3	<i>January 1, 2009</i>	New section
Sec. 4	<i>January 1, 2009</i>	New section
Sec. 5	<i>January 1, 2009</i>	New section
Sec. 6	<i>January 1, 2009</i>	New section
Sec. 7	<i>July 1, 2008</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>July 1, 2008</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Labor Dept.	GF - Cost/Revenue Gain	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill would require professional employer organizations to register with the Department of Labor (DOL). This would result in additional personnel and administrative costs of under \$100,000 associated with personnel to register, renew, and review applications and financial documents.

The bill would result in a revenue gain associated with imposing registration and renewal fees, which may be used to cover administrative costs for the purposes of sections 2 to 6 of the bill. The cost for a limited registration to be filed or renewed would not exceed \$1,000. The initial registration fee for a professional employer organization would not exceed \$1,500 and a renewal fee would not exceed \$1,000. The revenue generated from this fee is unknown, but is not anticipated to be significant.

The bill would also result in a revenue gain associated with imposing administrative and civil penalties, which may be used to enforce sections 2 to 6 of the bill. The administrative penalties must not exceed \$1,000 for each material violation. Additional violations will result in a civil penalty of \$300 for each violation. The revenue generated from penalties is not anticipated to be significant.

The bill also establishes a joint enforcement commission on employee misclassification, which has no fiscal impact.

House "A" alters the provisions of the bill to specify that DOL may use the revenue generated from fees to cover administrative costs and the revenue generated from penalties to cover enforcement costs. House "A" also adds a civil penalty fee of \$300, and reduces the cost to initially file a limited registration by \$500. This change could potentially decrease the revenue gain to DOL, although such impact is not anticipated to be significant.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, and subject to the volume of registrations and violations.

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**OLR Bill Analysis****sHB 5113 (as amended by House "A")\******AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS.*****SUMMARY:**

This bill requires professional employer organizations (PEOs) to register with the Labor Department (DOL) and creates standards for them, including financial capacity standards. It defines the organizations as businesses that provide employer services for their clients and have entered coemployment agreements with their client's employees. It sets application requirements, allows certain PEOs to meet its reporting and financial requirements as a group, and allows out-of-state organizations to obtain a limited registration.

The bill sets standards for the contracts between the organizations and their clients.

It prohibits the organizations from, among other things, committing willful violations of its provisions and authorizes the labor commissioner to discipline violators.

The bill states its relationship to other labor laws and laws creating certain economic development programs.

The bill also establishes a permanent enforcement commission to address the problem of employers avoiding state and federal labor, employment, and tax law obligations by misclassifying their employees.

\*House Amendment "A" makes a number of changes to the original bill including (1) modifying some application requirements, (2) adding

to the financial capacity requirements for PEOs with fewer than 12 months of operating history, (3) establishing a registration fee for limited registrations, (4) creating a new civil penalty for PEOs that violate the bill, (5) authorizing the attorney general to recover unpaid penalties through civil actions, (6) establishing where registration money will be deposited and authorizing how it can be used, and (7) permitting the labor commissioner to issue regulations rather than requiring them. It also adds a provision creating an enforcement commission to coordinate the investigation and civil prosecutions of employers attempting to evade labor, employment, and tax laws by misclassifying their employees.

EFFECTIVE DATES: January 1, 2009, except the definitions section, including the definition of a PEO, is effective on October 1, 2008; the provision on the bill's relationship to state labor law and the creation of the employee misclassification enforcement commission are effective on July 1, 2008; and the provision requiring implementing regulations is effective on passage.

#### **§§ 1 & 3 — REGISTRATION REQUIRED**

The bill prohibits providing, advertising, or otherwise holding oneself out as providing professional employer services without being registered as a PEO with the Labor Department.

It requires each PEO operating in this state on January 1, 2009 to register by March 1, 2009. This initial registration is valid until 180 days after the end of its first fiscal year that is more than one year after March 1, 2009. Each PEO or PEO group must file with the commissioner the beginning and ending date of its fiscal year and notify and file with the commissioner regarding any change of its fiscal year.

It requires each PEO not operating in this state on January 1, 2009, to complete its initial registration before providing services.

The bill requires the Labor Department to (1) keep a list of registered PEOs and (2) develop forms necessary to promote the

efficient administration of the registration requirements. All registered PEOs must notify the commissioner of the address of the principal place of business and of each office or proposed office in the state. The commissioner must also be informed of any changes of address within five working days.

Under the bill, the initial registration fee must be no more than \$1,500 and the renewal fee must be no more than \$1,000.

### **Definitions**

The bill defines a “professional employer organization” as any person engaged in the business of providing professional employer services, regardless of whether the person uses the term or conducts business as a PEO, staff leasing company, registered staff leasing company, employee leasing company, administrative employer, or any other name. The bill defines “person” as any individual, partnership, corporation, limited liability corporation, association, or other legal entity.

“Professional employer services” means entering into coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

A “coemployment relationship” is an ongoing relationship in which the rights, duties, and obligations of an employer are allocated between a PEO and a client pursuant to a professional employer agreement. A “client” is any person who, as an employer, enters into a professional employer agreement with a PEO. A “covered employee” is an individual who (1) is an employee of a client that has a coemployment relationship with a PEO, (2) has received written notice of the coemployment, and (3) has received a written summary of the obligations and responsibilities of the client and the PEO under a professional employer agreement.

Under the bill, a PEO does not include:

1. arrangements in which a person, other than a person whose principal business activity is entering into professional employer arrangements, shares employees with a commonly owned company within the meaning of Section 414(b) and (c) of the Internal Revenue Code;
2. independent contractor arrangements in which the contractor assumes responsibility for the product produced or service performed and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied; or
3. temporary help services that employ individuals directly to furnish part-time or temporary help to others.

***Initial Application Requirements***

An application for an initial PEO registration must include:

1. the name or names under which the applicant will conduct or has conducted business before the application date;
2. the addresses of the business's principal office and each office in Connecticut;
3. the applicant's federal and state taxpayer and employer identification number;
4. a list by jurisdiction of any name under which the applicant operated in the five years before the application date, including any alternative names, names of predecessors or immediate successor business, and, if known, any other successor businesses;
5. an ownership statement that includes the name and business experience of any person that, individually or with others, owns, controls, or will control, directly or indirectly, 25% or more of the applicant's equity interests;

6. a management statement that includes the name and business experience of any person who serves or will serve as president, chief executive officer, or otherwise has or will have the authority to act as senior executive officer; and
7. a statement of the applicant's financial condition.

The bill requires each applicant engaged in the business of providing professional employer services before January 1, 2009 to submit its most recent audit, which must have been conducted within 13 months before the application date.

If an applicant has not had sufficient operating history to have audited financial statements based on at least 12 months of operating history, the bill requires the applicant to meet the financial capacity requirements (specified below) and submit financial statements prepared by an independent, licensed certified public accountant. In the statement, the accountant must attest that:

1. it is the applicant's most recent financial statement,
2. the accountant reviewed the statement within six months of the registration,
3. the applicant is not delinquent in paying state or federal taxes, and
4. the applicant meets the financial capacity standards set in the bill.

All information obtained from a PEO or PEO group under the bill is subject to disclosure in accordance with the state Freedom of Information Act.

### ***Renewal Application***

The bill requires registrations to be renewed annually. A PEO may apply for renewal by submitting, not later than 180 days after the end of its fiscal year (1) an audit for the preceding fiscal year and (2) a

notice of any changes from the information provided in its immediately preceding application. An applicant may apply for an extension with the department, but this request must be accompanied by a letter from its auditor stating the reasons for the delay and the anticipated audit completion date. The financial statement must be:

1. prepared in accordance with generally accepted accounting principles,
2. audited by an independent and properly licensed certified public accountant, and
3. without qualification as to any increase in the going concern status of the PEO.

### **§ 1 — PEO GROUPS**

A “professional employer organization group” is two or more PEOs that are majority-owned or commonly controlled by the same entity, parent, or controlling persons. The bill allows PEOs in a PEO group to satisfy the bill’s reporting and financial requirements on a combined or consolidated basis if each member of the group guarantees the obligations under the bill of each other group member. In the case of a group that submits a combined or consolidated audited financial statement including entities that are not PEOs or that are not in the PEO group, the controlling entity of the PEO group must guarantee the obligations of the PEO in the group.

PEOs or PEO groups are required to notify the commissioner of the name and address of a controlling entity, if there is one.

### **§ 3 — LIMITED REGISTRATION**

The bill allows the labor commissioner to issue a limited registration to a PEO if it provides evidence that it:

1. is domiciled outside this state and is licensed or registered as a PEO in another state,

2. does not maintain an office or directly solicit clients located or domiciled within Connecticut, and
3. does not have more than 50 covered employees employed or domiciled in this state at any particular time.

Limited registrations are valid for one year and must be renewed annually at the completion of the registrant's fiscal year. The fee for limited registrations and renewals is established by the commissioner and must not be more than \$1,000.

To receive a limited registration, the PEO or PEO group must provide the commissioner with sufficient information and documentation to show the group qualifies for the limited registration.

#### **§ 4 — FINANCIAL CAPACITY REQUIREMENTS**

The bill requires PEOs or PEO groups to meet one of two financial capacity standards. The first is to maintain a minimum of \$150,000 in working capital, as defined by generally accepted accounting principles, as reflected in the financial statements submitted to the department with the initial registration or annual renewal.

A registrant with less than \$150,000 in working capital at renewal has 180 days to attain the \$150,000. During the 180 days, the registrant must submit quarterly statements accompanied by the chief executive officer's attestation that all wages, taxes, workers' compensation premiums, and employee benefits have been paid.

The second way of demonstrating financial capacity is to provide a bond, irrevocable letter of credit, or securities to the Labor Department with a minimum value of \$150,000. The bond must be held by a depository designated by the commissioner, securing payment by the organization of all taxes, wages, benefits, or other entitlements due to or with respect to covered employees.

The bill authorizes the commissioner to accept an affidavit or certification of a bonded, independent, and qualified assurance

organization approved by the commissioner certifying qualifications of a PEO in lieu of these requirements.

The bill exempts a PEO with a limited registration from the financial capacity requirements.

#### **§ 5 — PROFESSIONAL EMPLOYER AGREEMENT**

The bill requires PEOs and their clients to allocate their rights, duties, and obligations in an agreement and specifically requires the agreement to:

1. provide for the (a) allocation of employer rights and obligations between the client and the PEO with respect to the covered employees and (b) PEO and the client to assume the responsibilities required by the bill and
2. require the PEO to (a) pay wages to covered employees; (b) withhold, collect, report, and remit payroll-related and unemployment taxes; and (c) make payments for employee benefits for covered employees to the extent the PEO has assumed the responsibility in the agreement.

Unless the agreement expressly states otherwise, the bill provides that:

1. a client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold by the client's business;
2. a client is solely responsible for directing, supervising, training, and controlling the covered employees' work with respect to the client's business activities and solely responsible for the acts, errors, or omissions of the covered employees with regard to such activities;
3. a client is not liable for the acts, errors, or omissions of a PEO or of any covered employee of the client when the covered

employee is acting under the express direction and control of the PEO;

4. a PEO is not be liable for the acts, errors, or omissions of a client or its covered employees when they are acting under the client's express direction and control; and
5. a covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the organization for purposes of general liability insurance, fidelity bonds, surety bonds, employer's liability that is not covered by workers' compensation, or employer's liability insurance carried by the PEO, unless the covered employee is included by specific reference in the agreement and applicable prearranged employment contract, insurance contract, or bond.

**§ 2 — EXISTING AGREEMENTS**

The bill provides that it does not, and professional employer agreements must not, (1) diminish existing rights between covered employees and a client existing before the effective date of either the bill or the professional employer agreement or (2) create any new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or the bill.

**§ 6 — DISCIPLINE**

The bill subjects PEOs and their controlling persons to discipline by the labor commissioner for:

1. willfully violating the bill's registration, financial capacity, and written agreement provisions;
2. being convicted of a crime that relates to (a) the operation of a PEO, (b) fraud or deceit, or (c) the ability of the PEO or its controlling person to operate a PEO;
3. knowingly making a material misrepresentation to the Labor

Department or other governmental agency;

4. misappropriating any funds of a client employer; or
5. using fraudulent or coercive practices to obtain or retain business or demonstrating gross financial irresponsibility.

The bill authorizes the labor commissioner, after notice and opportunity for hearing, upon finding that a PEO or its controlling person has committed a prohibited act, to:

1. deny a registration application;
2. revoke, restrict, or refuse to renew a registration;
3. impose an administrative fine up to \$1,000 for each material violation;
4. place the PEO or its controlling person on probation for a period determined by the commissioner, subject to reasonable conditions he specifies; or
5. issue a cease and desist order.

In addition to the above mentioned penalties, a PEO or PEO group or its officers or agents found in violation of the bill's PEO provisions is liable to DOL for a civil penalty of \$300 for each violation.

Furthermore, upon complaint of the commissioner, the attorney general must institute a civil action to recover any penalties the bill creates that are due to the state. Any amounts recovered by the civil action must be deposited in the General Fund.

## **§ 6 — GENERAL FUND DEPOSITS**

Registration and renewal fees and penalties collected under the bill must be deposited in the General Fund and credited to a separate, nonlapsing appropriation to the Labor Department for other current expenses. The department may use the funds for the cost of

administering and enforcing the PEO registration program.

### **§§ 2 & 7 — RELATIONSHIP TO EXISTING LAWS**

The bill specifies that it does not eliminate or diminish (1) employee protections and employer responsibilities under the state labor law, regulations, or DOL policies or (2) DOL's ability to enforce them. It also does not diminish any other rights of covered employees and clients that existed before the PEO agreement or give covered employees enforceable rights against PEOs other than those the agreement or the bill establishes.

The bill specifies that a covered employee who must be licensed, registered, or certified under any provision of the general statutes must be deemed to be solely an employee of the client for credentialing purposes. Further, a PEO must not be deemed to engage in any occupation, trade, profession, or other activity subject to licensing, registration, or certification requirements, or otherwise regulated by a governmental entity, solely by entering into and maintaining a coemployment relationship.

For the purpose of determining tax credits and other economic incentives provided by this state or another government and based on employment, the bill deems the client's covered employees to be solely employees of the client.

Under the bill, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not be affected by entering a professional employer agreement.

### **§ 8 — REGULATIONS**

The bill permits the commissioner to adopt implementing regulations by July 1, 2009. It requires the regulations to include:

1. guidelines for electronic filing of applications, documents, reports, and other filings by bonded, independent, and qualified assurance organizations approved by the commissioner to

- satisfy the bill's requirements;
2. criteria for notice and written summaries to covered employees of the PEO arrangement, including whether all or part of a client's employees are covered; and
  3. required notice of who is the controlling entity of a PEO or PEO group.

### **§ 9 — EMPLOYEE MISCLASSIFICATION ENFORCEMENT COMMISSION**

The bill establishes a permanent enforcement commission to address the problem of employers avoiding state and federal labor, employment, and tax law obligations by misclassifying their employees. The commission must meet at least quarterly and (1) coordinate the civil prosecution of state and federal employment law violations involving employee misclassification and (2) report any suspected violation of state criminal statutes to the chief state's attorney or the state's attorney serving the district where the violation allegedly occurred. The most common form of misclassification involves an employer treating employees as independent contractors in order to avoid paying workers' compensation insurance premiums and unemployment taxes.

The commission members are the labor and revenue services commissioners, workers' compensation commission chairperson, attorney general, and chief state's attorney, or their designees.

By February 1, 2010, and every year after that, the commission must submit its report, with recommendations, to the governor and the Labor and Public Employees Committee. The report must summarize the commission's actions for the year and include any administrative or legislative recommendations.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 11 Nay 0 (03/04/2008)

General Law Committee

Joint Favorable

Yea 18 Nay 0 (03/11/2008)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 47 Nay 1 (04/09/2008)

Government Administration and Elections Committee

Joint Favorable

Yea 12 Nay 0 (04/16/2008)