



General Assembly

February Session, 2008

Raised Bill No. 5113

LCO No. 374

* HB05113LABGL_030508 *

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

AN ACT CONCERNING PROFESSIONAL EMPLOYER ORGANIZATIONS.

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

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

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

45 (C) Temporary help services that recruit, hire and solely set the
46 compensation of their employees, assign employees to work for an
47 organization as temporary, seasonal or special project employees and
48 reassign employees to other employers at the end of an assignment;

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

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

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

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

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

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

69 (2) A professional employer organization shall not be deemed to
70 engage in any occupation, trade, profession or other activity that is
71 subject to licensing, registration or certification requirements or is
72 otherwise regulated by a governmental entity solely by entering into
73 and maintaining a coemployment relationship.

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

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

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

91 (1) The name or names under which the applicant will conduct
92 business or under which the applicant conducted business prior to
93 January 1, 2009;

94 (2) The address of the principle place of business of the applicant
95 and the address of each office it maintains or will maintain in this state;

96 (3) The applicant's taxpayer or employer identification number;

97 (4) A list by jurisdiction of any name under which the applicant
98 operated in the five years preceding the date of application, including
99 any alternative names, names of predecessors and, if known, successor
100 business entities;

101 (5) A statement of ownership, that includes the name and evidence
102 of the business experience of any person that, individually or acting in
103 concert with one or more other persons, owns or controls or will

104 control, directly or indirectly, twenty-five per cent or more of the
105 equity interest of the applicant;

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

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

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

119 (B) If an applicant has not had sufficient operating history to have
120 audited financial statements based on at least twelve months of
121 operating history, the applicant shall meet the financial capacity
122 requirements specified in section 4 of this act and submit financial
123 statements reviewed by a certified public accountant.

124 (C) All information obtained from a professional employer
125 organization or professional employer organization group under this
126 subdivision shall be confidential and shall not be published or open to
127 inspection, except as otherwise required by law.

128 (b) (1) Each professional employer organization operating within
129 this state on and after January 1, 2009, shall complete its initial
130 registration not later than June 1, 2009. Such initial registration shall be
131 valid until the end of the professional employer organization's first
132 fiscal year end that is subsequent to January 1, 2011.

133 (2) Each professional employer organization not operating within

134 this state as of July 1, 2008, shall complete its initial registration prior to
135 commencement of operations within this state.

136 (c) A registered professional employer organization may apply for
137 renewal of its registration annually by submitting to the commissioner,
138 not later than one hundred eighty days after the end of the
139 professional employer organization's or professional employer
140 organization group's fiscal year, (1) an audit for the preceding fiscal
141 year, and (2) notice of any changes in the information provided in such
142 registrant's immediately preceding application for initial registration
143 or renewal. An applicant may apply for an extension with the
144 department, but any such request shall be accompanied by a letter
145 from the auditor stating the reasons for the delay and the anticipated
146 audit completion date. The financial statement shall be prepared in
147 accordance with generally accepted accounting principles and audited
148 by an independent certified public accountant licensed to practice in
149 the jurisdiction in which such accountant is located, and shall be
150 without qualification as to any increase in concern status of the
151 professional employer organization.

152 (d) Professional employer organizations in a professional employer
153 organization group may satisfy the reporting and financial
154 requirements of this section and section 4 of this act on a combined or
155 consolidated basis provided each member of the professional
156 employer organization group guarantees the obligations under
157 sections 2 to 6, inclusive, of this act of each other member of the
158 professional employer organization group. In the case of a professional
159 employer organization group that submits a combined or consolidated
160 audited financial statement, including entities that are not professional
161 employer organizations or that are not in the professional employer
162 organization group, the controlling entity of the professional employer
163 organization group under the consolidated or combined statement
164 shall guarantee the obligations of the professional employer
165 organization in the professional employer organization group.

166 (e) The commissioner may issue a professional employer

167 organization a limited registration if such professional employer
168 organization provides evidence, on a form prescribed by the
169 commissioner, that it:

170 (1) Is domiciled outside this state and is licensed or registered as a
171 professional employer organization in another state;

172 (2) Does not maintain an office in this state or directly solicit clients
173 located or domiciled within this state; and

174 (3) Does not have more than fifty covered employees employed or
175 domiciled in this state at any particular time.

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

178 (g) No registration fee charged pursuant to this section shall exceed
179 the amount reasonably necessary for the administration of this section
180 and sections 4 to 6, inclusive, of this act provided an initial registration
181 fee shall not exceed one thousand five hundred dollars and a renewal
182 fee shall not exceed one thousand dollars.

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

187 (1) Maintain a minimum of one hundred fifty thousand dollars in
188 working capital, as defined by generally accepted accounting
189 principles, as reflected in the financial statements submitted to the
190 department with the initial registration and each annual renewal. A
191 professional employer organization or professional employer
192 organization group with less than one hundred fifty thousand dollars
193 in working capital at renewal shall have one hundred eighty days to
194 eliminate the deficiency. During such one hundred eighty days, the
195 professional employer organization or professional employer
196 organization group shall submit quarterly financial statements to the

197 department accompanied by the attestation of the chief executive
198 officer that all wages, taxes, workers' compensation premiums and
199 employee benefits have been paid by the professional employer
200 organization or members of the professional employer organization
201 group; or

202 (2) Provide a bond, irrevocable letter of credit or securities with a
203 minimum market value of one hundred fifty thousand dollars to the
204 department. Such bond shall be held by a depository designated by the
205 commissioner securing payment by the professional employer
206 organization of all taxes, wages, benefits or other entitlement due to or
207 with respect to covered employees, if the professional employer
208 organization does not make such payments when due. For any
209 professional employer organization or professional employer
210 organization group whose annual financial statements do not indicate
211 positive working capital, the amount of the bond shall be one hundred
212 thousand dollars plus an amount sufficient to cover the deficit in
213 working capital.

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

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

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

226 (b) Each professional employer agreement shall:

227 (1) Provide for the (A) allocation of employer rights and obligations

228 between the clients and the professional employer organization with
229 respect to the covered employees, and (B) professional employer
230 organization and the client to assume the responsibilities required by
231 sections 2 to 6, inclusive, of this act; and

232 (2) Require the professional employer organization (A) to pay
233 wages to covered employees; (B) to withhold, collect, report and remit
234 payroll-related and unemployment taxes; and (C) to the extent the
235 professional employer organization has assumed responsibility in the
236 professional employer agreement, to make payment or employee
237 benefits for covered employees.

238 (c) Except as otherwise expressly provided in the applicable
239 professional employer agreement:

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

242 (2) A client shall be solely responsible for directing, supervising,
243 training and controlling the work of covered employees with respect to
244 the business activities of the client and solely responsible for the act,
245 errors or omissions of covered employees with regard to such
246 activities;

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

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

255 (5) A covered employee is not, solely as the result of being a covered
256 employee of a professional employer organization, an employee of the
257 professional employer organization for purposes of general liability

258 insurance, fidelity bonds, surety bonds, employer's liability which is
259 not covered by workers' compensation and employer's liability
260 insurance carried by the professional employer organization unless the
261 covered employee is included by specific reference in the professional
262 employer agreement and applicable prearranged employment
263 contract, insurance contract or bond.

264 Sec. 6. (NEW) (*Effective January 1, 2009*) (a) An applicant for
265 registration or a registered professional employer organization or
266 controlling person of an applicant or a registered professional
267 employer organization shall be subject to disciplinary action pursuant
268 to subsection (b) of this section, if such applicant registrant or
269 controlling person:

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

272 (2) Is convicted of a crime that relates to (A) the operation of a
273 professional employer organization, (B) fraud or deceit, or (C) the
274 ability of the professional employer organization or a controlling
275 person of a professional employer organization to operate a
276 professional employer organization; or

277 (3) Knowingly makes a material misrepresentation to the
278 department or other governmental agency.

279 (b) Upon finding, after notice and opportunity for hearing, that an
280 applicant for registration or a registered professional employer
281 organization or a controlling person of an applicant or registered
282 professional employer organization violated one or more provisions of
283 subsection (a) of this section, the commissioner may:

284 (1) Deny any application for registration;

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

286 (3) Impose an administrative penalty in an amount not to exceed

287 one thousand dollars for each material violation;

288 (4) Place the professional employer organization or controlling
 289 person of a professional employer organization on probation for a
 290 period to be determined by the commissioner, subject to reasonable
 291 conditions specified by the commissioner; or

292 (5) Issue a cease and desist order.

293 Sec. 7. (NEW) (*Effective July 1, 2008*) Nothing in sections 1 to 6,
 294 inclusive, of this act shall be construed as affecting any provisions
 295 within title 31 of the general statutes, or any regulations or polices
 296 adopted by the Labor Department, including, but not limited to, such
 297 provisions, regulations or policies relating to determinations of the
 298 employer-employee relationship.

299 Sec. 8. (NEW) (*Effective from passage*) On or before January 1, 2009,
 300 the commissioner shall adopt regulations, in accordance with chapter
 301 54 of the general statutes, to implement and administer sections 1 to 6,
 302 inclusive, of this act.

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

LAB *Joint Favorable C/R*

GL