

# HOUSE BILL 1056

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CF 9lr2473

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By: **Delegate Vaughn**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Professional Employer Organization Recognition and Registration Act**

3 FOR the purpose of prohibiting a person from engaging in the business of providing  
4 certain professional employer services in the State unless the person is  
5 registered as a professional employer organization, except under certain  
6 circumstances; requiring the Department of Labor, Licensing, and Regulation to  
7 maintain a certain list of professional employer organizations and to make the  
8 list available to the public on the Internet; providing for the application  
9 procedures for registration as a professional employer organization; providing  
10 for the expiration of the registration; providing for procedures for the renewal of  
11 a registration; allowing a professional employer organization to apply for a  
12 limited registration under certain circumstances; providing for the application  
13 and renewal procedures for a limited registration as a professional employer  
14 organization; authorizing the Secretary to deny registration or a registration  
15 certificate to an applicant, reprimand a registrant, suspend or revoke a  
16 registration or registration certificate, or impose a civil penalty under certain  
17 circumstances; requiring the Secretary to provide an applicant or a registrant  
18 notice and an opportunity for a hearing to contest a proposed disciplinary  
19 action; providing for certain rights and duties of certain clients in a  
20 co-employment relationship with a professional employer organization;  
21 providing for certain rights and duties of certain professional employer  
22 organizations in a co-employment relationship with a client; requiring a  
23 professional employer agreement to contain certain provisions; requiring a  
24 professional employer organization to provide a certain notice to certain covered  
25 employees; providing for the obligations and liabilities of certain clients subject  
26 to a professional employer agreement; providing that certain covered employees  
27 are not to be considered employees of a professional employer organization for  
28 certain purposes, except under certain circumstances; providing that certain  
29 professional employer organizations are not engaged in the sale of insurance or  
30 in acting as certain third party administrators; prohibiting a person from acting  
31 as, offering to act as, or holding itself out as a professional employer

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 organization in the State unless registered under this Act; prohibiting a person  
 2 from knowingly making a false representation or false statement in certain  
 3 applications; prohibiting a person from advertising in a certain manner;  
 4 establishing certain criminal penalties; authorizing the Secretary to bring a  
 5 certain civil administrative action against certain persons; providing for the  
 6 construction of this Act; prohibiting a presently existing obligation or contract  
 7 right from being impaired by this Act; allowing certain persons a certain period  
 8 of time after the effective date of this Act to register; making certain provisions  
 9 of this Act severable; and generally relating to the regulation of professional  
 10 employer organizations and professional employer agreements.

11 BY adding to

12 Article – Business Regulation

13 Section 20–101 through 20–404 to be under the new title “Title 20. Professional  
 14 Employer Organizations”

15 Annotated Code of Maryland

16 (2004 Replacement Volume and 2008 Supplement)

17 Preamble

18 WHEREAS, Professional employer organizations provide a valuable service to  
 19 commerce and the citizens of this State by increasing the opportunities of employers to  
 20 develop cost-effective methods of satisfying their personnel requirements and  
 21 providing employees with access to certain employment benefits that might otherwise  
 22 not be available to them; and

23 WHEREAS, Professional employer organizations operating in the State should  
 24 be properly recognized and regulated by the Department of Labor, Licensing, and  
 25 Regulation; now, therefore,

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article – Business Regulation**

29 **TITLE 20. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

30 **SUBTITLE 1. DEFINITIONS.**

31 **20–101.**

32 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 33 INDICATED.

34 (B) “CLIENT” MEANS A PERSON THAT ENTERS INTO A PROFESSIONAL  
 35 EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

1           (C) (1) **“CO-EMPLOYMENT RELATIONSHIP” MEANS AN ONGOING**  
2 **RELATIONSHIP IN WHICH THE RIGHTS, DUTIES, AND OBLIGATIONS OF AN**  
3 **EMPLOYER THAT ARISE OUT OF AN EMPLOYMENT RELATIONSHIP ARE SHARED**  
4 **BETWEEN A PROFESSIONAL EMPLOYER ORGANIZATION AND A CLIENT IN**  
5 **ACCORDANCE WITH A PROFESSIONAL EMPLOYER AGREEMENT.**

6           (2) **“CO-EMPLOYMENT RELATIONSHIP” DOES NOT MEAN A**  
7 **TEMPORARY OR PROJECT-SPECIFIC RELATIONSHIP BETWEEN A PROFESSIONAL**  
8 **EMPLOYER ORGANIZATION AND A CLIENT.**

9           (D) **“COVERED EMPLOYEE” MEANS AN INDIVIDUAL WHO:**

10           (1) **HAS A CO-EMPLOYMENT RELATIONSHIP WITH A**  
11 **PROFESSIONAL EMPLOYER ORGANIZATION AND A CLIENT;**

12           (2) **HAS RECEIVED WRITTEN NOTICE OF THE CO-EMPLOYMENT**  
13 **WITH THE PROFESSIONAL EMPLOYER ORGANIZATION; AND**

14           (3) **HAS RECEIVED A WRITTEN SUMMARY OF THE OBLIGATIONS**  
15 **AND RESPONSIBILITIES OF THE CLIENT AND THE PROFESSIONAL EMPLOYER**  
16 **ORGANIZATION IN ACCORDANCE WITH THE PROFESSIONAL EMPLOYER**  
17 **AGREEMENT.**

18           (E) **“PROFESSIONAL EMPLOYER AGREEMENT” MEANS A WRITTEN**  
19 **CONTRACT BETWEEN A CLIENT AND A PROFESSIONAL EMPLOYER**  
20 **ORGANIZATION THAT PROVIDES FOR THE CO-EMPLOYMENT OF COVERED**  
21 **EMPLOYEES AND PROVIDES FOR THE ALLOCATION OF EMPLOYER RIGHTS AND**  
22 **OBLIGATIONS BETWEEN THE CLIENT AND THE PROFESSIONAL EMPLOYER**  
23 **ORGANIZATION WITH RESPECT TO THE COVERED EMPLOYEES.**

24           (F) (1) **“PROFESSIONAL EMPLOYER ORGANIZATION” MEANS A**  
25 **PERSON THAT IS ENGAGED IN THE BUSINESS OF PROVIDING PROFESSIONAL**  
26 **EMPLOYER SERVICES.**

27           (2) **“PROFESSIONAL EMPLOYER ORGANIZATION” DOES NOT**  
28 **INCLUDE:**

29           (I) **A PERSON THAT PROVIDES TEMPORARY HELP**  
30 **SERVICES;**

31           (II) **AN EMPLOYMENT AGENCY AS DEFINED IN § 9-101 OF**  
32 **THIS ARTICLE;**

1                   (III) AN ARRANGEMENT IN WHICH A PERSON, WHOSE  
2 PRINCIPAL BUSINESS ACTIVITY IS NOT ENTERING INTO PROFESSIONAL  
3 EMPLOYER ARRANGEMENTS, SHARES EMPLOYEES WITH A COMMONLY-OWNED  
4 COMPANY WITHIN THE MEANING OF § 414(B) AND (C) OF THE INTERNAL  
5 REVENUE CODE OF 1986; OR

6                   (IV) AN INDEPENDENT CONTRACTOR ARRANGEMENT IN  
7 WHICH A PERSON:

8                   1. ASSUMES RESPONSIBILITY FOR THE PRODUCT  
9 PRODUCED OR SERVICE PERFORMED BY THE PERSON OR AN AGENT OF THE  
10 PERSON; AND

11                   2. RETAINS AND EXERCISES PRIMARY DIRECTION  
12 AND CONTROL OVER THE WORK PERFORMED BY THE INDIVIDUALS WHOSE  
13 SERVICES ARE SUPPLIED BY THE ARRANGEMENTS.

14           (G) “PROFESSIONAL EMPLOYER ORGANIZATION GROUP” MEANS TWO  
15 OR MORE PROFESSIONAL EMPLOYER ORGANIZATIONS THAT ARE  
16 MAJORITY-OWNED OR COMMONLY CONTROLLED BY THE SAME ENTITY, PARENT  
17 ENTITY, OR CONTROLLING PERSONS.

18           (H) (1) “PROFESSIONAL EMPLOYER SERVICES” MEANS THE SERVICE  
19 OF ENTERING INTO CO-EMPLOYMENT RELATIONSHIPS IN WHICH ALL OR A  
20 MAJORITY OF THE EMPLOYEES PROVIDING SERVICES TO A CLIENT OR DIVISION  
21 OR WORK UNIT OF A CLIENT ARE COVERED EMPLOYEES.

22                   (2) “PROFESSIONAL EMPLOYER SERVICES” INCLUDE :

23                   (I) HUMAN RESOURCES MANAGEMENT;

24                   (II) PAYROLL PROCESSING OR ADMINISTRATION; AND

25                   (III) EMPLOYEE BENEFIT ADMINISTRATION.

26           (I) “REGISTRANT” MEANS A PROFESSIONAL EMPLOYER ORGANIZATION  
27 REGISTERED UNDER THIS TITLE.

28           (J) “TEMPORARY HELP SERVICES” MEANS SERVICES THAT CONSIST OF  
29 A PERSON:

30                   (1) RECRUITING AND HIRING ITS OWN EMPLOYEES;



1           (1) THE NAME OR NAMES UNDER WHICH THE PROFESSIONAL  
2 EMPLOYER ORGANIZATION CONDUCTS BUSINESS;

3           (2) THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE  
4 PROFESSIONAL EMPLOYER ORGANIZATION AND THE ADDRESS OF EACH OFFICE  
5 IT MAINTAINS IN THE STATE;

6           (3) THE PROFESSIONAL EMPLOYER ORGANIZATION'S TAXPAYER  
7 OR EMPLOYER IDENTIFICATION NUMBER;

8           (4) A LIST BY JURISDICTION OF EACH NAME UNDER WHICH THE  
9 PROFESSIONAL EMPLOYER ORGANIZATION HAS OPERATED IN THE PRECEDING 5  
10 YEARS, INCLUDING ANY ALTERNATIVE NAMES, NAMES OF PREDECESSORS, AND,  
11 IF KNOWN, SUCCESSOR BUSINESS ENTITIES;

12           (5) A STATEMENT OF OWNERSHIP, INCLUDING THE NAME AND  
13 EVIDENCE OF THE BUSINESS EXPERIENCE OF ANY PERSON THAT, INDIVIDUALLY  
14 OR ACTING IN CONCERT WITH ONE OR MORE OTHER PERSONS, OWNS OR  
15 CONTROLS, DIRECTLY OR INDIRECTLY, 25% OR MORE OF THE EQUITY  
16 INTERESTS OF THE PROFESSIONAL EMPLOYER ORGANIZATION;

17           (6) A STATEMENT OF MANAGEMENT, INCLUDING THE NAME AND  
18 EVIDENCE OF THE BUSINESS EXPERIENCE OF ANY PERSON WHO SERVES AS  
19 PRESIDENT, CHIEF EXECUTIVE OFFICER, OR OTHERWISE HAS THE AUTHORITY  
20 TO ACT AS SENIOR EXECUTIVE OFFICER OF THE PROFESSIONAL EMPLOYER  
21 ORGANIZATION; AND

22           (7) A FINANCIAL STATEMENT THAT SETS FORTH THE FINANCIAL  
23 CONDITION OF THE PROFESSIONAL EMPLOYER ORGANIZATION OR  
24 PROFESSIONAL EMPLOYER GROUP.

25           (c) (1) AT THE TIME OF APPLICATION FOR REGISTRATION, THE  
26 APPLICANT SHALL SUBMIT THE MOST RECENT AUDIT OF THE APPLICANT.

27           (2) THE AUDIT MAY NOT BE OLDER THAN 13 MONTHS.

28           (3) AFTER THE INITIAL REGISTRATION, A PROFESSIONAL  
29 EMPLOYER ORGANIZATION OR PROFESSIONAL EMPLOYER GROUP SHALL FILE  
30 ON AN ANNUAL BASIS, WITHIN 180 DAYS AFTER THE END OF THE PROFESSIONAL  
31 EMPLOYER ORGANIZATION'S OR PROFESSIONAL EMPLOYER ORGANIZATION  
32 GROUP'S FISCAL YEAR, A SUCCEEDING AUDIT.

33           (4) AN APPLICANT MAY APPLY FOR AN EXTENSION WITH THE  
34 DEPARTMENT, BUT THE REQUEST SHALL BE ACCOMPANIED BY A LETTER FROM

1 THE AUDITORS STATING THE REASONS FOR THE DELAY AND THE ANTICIPATED  
2 AUDIT COMPLETION DATE.

3 (5) THE FINANCIAL STATEMENT SHALL BE PREPARED IN  
4 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, AND  
5 AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED TO  
6 PRACTICE IN THE JURISDICTION IN WHICH THE ACCOUNTANT IS LOCATED, AND  
7 SHALL BE WITHOUT QUALIFICATION AS TO THE GOING CONCERN STATUS OF  
8 THE PROFESSIONAL EMPLOYER ORGANIZATION.

9 (6) A PROFESSIONAL EMPLOYER ORGANIZATION GROUP MAY  
10 SUBMIT COMBINED OR CONSOLIDATED AUDITED FINANCIAL STATEMENTS TO  
11 MEET THE REQUIREMENTS OF THIS SUBSECTION.

12 (7) A PROFESSIONAL EMPLOYER ORGANIZATION THAT HAS NOT  
13 HAD SUFFICIENT OPERATING HISTORY TO HAVE AUDITED FINANCIALS BASED  
14 ON AT LEAST 12 MONTHS OF OPERATING HISTORY MUST MEET THE FINANCIAL  
15 CAPACITY REQUIREMENTS AND PRESENT FINANCIAL STATEMENTS REVIEWED  
16 BY A CERTIFIED PUBLIC ACCOUNTANT.

17 **20-203.**

18 (A) (1) UNLESS RENEWED UNDER THIS SECTION, A REGISTRATION  
19 EXPIRES ON THE SECOND ANNIVERSARY OF ITS EFFECTIVE DATE.

20 (2) A REGISTRANT THAT MEETS THE REQUIREMENTS OF THIS  
21 SECTION MAY OBTAIN A RENEWAL OF A REGISTRATION BEFORE THE  
22 REGISTRATION EXPIRES FOR AN ADDITIONAL 2-YEAR TERM.

23 (B) AT LEAST 60 DAYS BEFORE A REGISTRATION EXPIRES, THE  
24 DEPARTMENT SHALL MAIL THE REGISTRANT, AT THE LAST KNOWN ADDRESS OF  
25 THE REGISTRANT:

26 (1) A RENEWAL APPLICATION FORM; AND

27 (2) A NOTICE THAT STATES:

28 (I) THE DATE ON WHICH THE CURRENT REGISTRATION  
29 EXPIRES; AND

30 (II) THE DATE BY WHICH THE DEPARTMENT MUST RECEIVE  
31 THE RENEWAL APPLICATION FOR A RENEWAL TO BE ISSUED AND MAILED  
32 BEFORE THE REGISTRATION EXPIRES.

1           **(C) THE DEPARTMENT SHALL RENEW THE REGISTRATION OF EACH**  
2 **REGISTRANT THAT:**

3                   **(1) SUBMITS TO THE DEPARTMENT A RENEWAL APPLICATION ON**  
4 **THE FORM PROVIDED BY THE DEPARTMENT;**

5                   **(2) OTHERWISE IS ENTITLED TO BE REGISTERED; AND**

6                   **(3) PAYS TO THE DEPARTMENT A NONREFUNDABLE RENEWAL**  
7 **FEE NOT TO EXCEED \$250.**

8 **20-204.**

9           **(A) A PROFESSIONAL EMPLOYER ORGANIZATION MAY APPLY FOR A**  
10 **LIMITED REGISTRATION UNDER THIS SECTION IF THE PROFESSIONAL**  
11 **EMPLOYER ORGANIZATION:**

12                   **(1) RESIDES OUTSIDE THIS STATE AND IS LICENSED OR**  
13 **REGISTERED AS A PROFESSIONAL EMPLOYER ORGANIZATION IN ANOTHER**  
14 **STATE;**

15                   **(2) DOES NOT MAINTAIN AN OFFICE IN THIS STATE OR DIRECTLY**  
16 **SOLICIT CLIENTS LOCATED OR DOMICILED WITHIN THIS STATE; AND**

17                   **(3) DOES NOT HAVE MORE THAN 50 COVERED EMPLOYEES**  
18 **EMPLOYED OR DOMICILED IN THIS STATE.**

19           **(B) TO APPLY FOR A LIMITED REGISTRATION, AN APPLICANT SHALL:**

20                   **(1) SUBMIT TO THE DEPARTMENT UNDER OATH AN APPLICATION**  
21 **ON THE FORM PROVIDED BY THE DEPARTMENT; AND**

22                   **(2) PAY TO THE DEPARTMENT THE NONREFUNDABLE**  
23 **APPLICATION FEE NOT TO EXCEED \$250.**

24           **(C) A REGISTRANT THAT MEETS THE REQUIREMENTS OF THIS SECTION**  
25 **MAY OBTAIN A RENEWAL OF A LIMITED REGISTRATION BEFORE THE LIMITED**  
26 **REGISTRATION EXPIRES FOR AN ADDITIONAL 1-YEAR TERM.**

27           **(D) (1) THE DEPARTMENT SHALL RENEW THE LIMITED**  
28 **REGISTRATION OF EACH REGISTRANT THAT:**

29                   **(I) SUBMITS TO THE DEPARTMENT A RENEWAL**  
30 **APPLICATION ON THE FORM PROVIDED BY THE DEPARTMENT;**



1                   (II) OTHERWISE IS ENTITLED TO A LIMITED REGISTRATION;  
2 AND

3                   (III) PAYS TO THE DEPARTMENT A NONREFUNDABLE  
4 RENEWAL FEE NOT TO EXCEED \$250.

5                   (2) AT LEAST 60 DAYS BEFORE A LIMITED REGISTRATION  
6 EXPIRES, THE DEPARTMENT SHALL MAIL THE REGISTRANT, AT THE LAST  
7 KNOWN ADDRESS OF THE REGISTRANT:

8                   (I) A RENEWAL APPLICATION FORM; AND

9                   (II) A NOTICE THAT STATES:

10                   1. THE DATE ON WHICH THE CURRENT  
11 REGISTRATION EXPIRES; AND

12                   2. THE DATE BY WHICH THE DEPARTMENT MUST  
13 RECEIVE THE RENEWAL APPLICATION FOR A RENEWAL TO BE ISSUED AND  
14 MAILED BEFORE THE REGISTRATION EXPIRES.

15 **20-205.**

16                   (A) THE SECRETARY MAY DENY REGISTRATION OR A REGISTRATION  
17 CERTIFICATE TO AN APPLICANT, REPRIMAND A REGISTRANT, SUSPEND OR  
18 REVOKE A REGISTRATION OR A REGISTRATION CERTIFICATE, OR IMPOSE A  
19 CIVIL PENALTY ON A REGISTRANT IF THE SECRETARY DETERMINES THAT THE  
20 APPLICANT OR REGISTRANT:

21                   (1) FRAUDULENTLY OR DECEPTIVELY OBTAINED OR ATTEMPTED  
22 TO OBTAIN A REGISTRATION OR REGISTRATION CERTIFICATE;

23                   (2) FRAUDULENTLY OR DECEPTIVELY USED A REGISTRATION OR  
24 REGISTRATION CERTIFICATE;

25                   (3) PRESENTED OR ATTEMPTED TO PRESENT THE PROFESSIONAL  
26 EMPLOYER ORGANIZATION REGISTRATION NUMBER OF ANOTHER REGISTRANT  
27 AS THE APPLICANT'S OR REGISTRANT'S PROFESSIONAL EMPLOYER  
28 ORGANIZATION REGISTRATION NUMBER;

29                   (4) USED OR ATTEMPTED TO USE AN EXPIRED, SUSPENDED, OR  
30 REVOKED PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION NUMBER  
31 OR REGISTRATION CERTIFICATE;

1           **(5) KNOWINGLY MADE A MATERIAL MISREPRESENTATION TO THE**  
2 **SECRETARY OR ANY OTHER DEPARTMENT OR UNIT OF THE STATE;**

3           **(6) KNOWINGLY AND REPEATEDLY VIOLATED THIS TITLE OR ANY**  
4 **REGULATIONS ADOPTED UNDER THIS TITLE;**

5           **(7) ENGAGED IN A PATTERN OF UNFAIR OR DECEPTIVE TRADE**  
6 **PRACTICES UNDER THE CONSUMER PROTECTION ACT, AS DETERMINED BY A**  
7 **FINAL ADMINISTRATIVE ORDER OR JUDICIAL DECISION;**

8           **(8) HAS BEEN CONVICTED OF A CRIME RELATING TO THE**  
9 **OPERATION OF A PROFESSIONAL EMPLOYER ORGANIZATION OR THE ABILITY OF**  
10 **A PROFESSIONAL EMPLOYER ORGANIZATION TO PROVIDE PROFESSIONAL**  
11 **EMPLOYER SERVICES;**

12           **(9) REPEATEDLY ENGAGED IN FRAUD, DECEPTION,**  
13 **MISREPRESENTATION, OR KNOWING OMISSIONS OF MATERIAL FACTS RELATED**  
14 **TO A PROFESSIONAL EMPLOYER AGREEMENT;**

15           **(10) HAD A SIMILAR REGISTRATION, REGISTRATION CERTIFICATE,**  
16 **OR LICENSE DENIED, SUSPENDED, OR REVOKED IN ANOTHER STATE OR**  
17 **JURISDICTION; OR**

18           **(11) HAD THE RENEWAL OF A SIMILAR REGISTRATION,**  
19 **REGISTRATION CERTIFICATE, OR LICENSE DENIED FOR ANY CAUSE OTHER**  
20 **THAN FAILURE TO PAY A RENEWAL FEE.**

21           **(B) THE SECRETARY SHALL PROVIDE AN APPLICANT OR REGISTRANT**  
22 **NOTICE AND AN OPPORTUNITY TO REQUEST A HEARING UNDER TITLE 10,**  
23 **SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE TO CONTEST A PROPOSED**  
24 **DISCIPLINARY ACTION.**

25           **SUBTITLE 3. GENERAL REQUIREMENTS AND PROVISIONS.**

26           **20-301.**

27           **(A) EXCEPT AS SPECIFICALLY PROVIDED IN THIS TITLE OR IN THE**  
28 **PROFESSIONAL EMPLOYER AGREEMENT, IN EACH CO-EMPLOYMENT**  
29 **RELATIONSHIP:**

30           **(1) THE CLIENT SHALL BE ENTITLED TO EXERCISE ALL RIGHTS**  
31 **AND SHALL BE OBLIGATED TO PERFORM ALL DUTIES AND RESPONSIBILITIES**

1 OTHERWISE APPLICABLE TO AN EMPLOYER IN AN EMPLOYMENT RELATIONSHIP;  
2 AND

3 (2) THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL BE  
4 ENTITLED TO EXERCISE ONLY THOSE RIGHTS, AND OBLIGATED TO PERFORM  
5 ONLY THOSE DUTIES AND RESPONSIBILITIES, SPECIFICALLY REQUIRED BY THIS  
6 TITLE OR SET FORTH IN THE PROFESSIONAL EMPLOYER AGREEMENT.

7 (B) THE RIGHTS, DUTIES, AND OBLIGATIONS OF THE PROFESSIONAL  
8 EMPLOYER ORGANIZATION AS CO-EMPLOYER WITH RESPECT TO ANY COVERED  
9 EMPLOYEE SHALL BE LIMITED TO THOSE ARISING UNDER THE PROFESSIONAL  
10 EMPLOYER AGREEMENT AND THIS TITLE DURING THE TERM OF  
11 CO-EMPLOYMENT BY THE PROFESSIONAL EMPLOYER ORGANIZATION OF THE  
12 COVERED EMPLOYEE.

13 (C) UNLESS OTHERWISE EXPRESSLY AGREED BY THE PROFESSIONAL  
14 EMPLOYER ORGANIZATION AND THE CLIENT IN A PROFESSIONAL EMPLOYER  
15 AGREEMENT, THE CLIENT RETAINS THE EXCLUSIVE RIGHT TO DIRECT AND  
16 CONTROL THE COVERED EMPLOYEES AS IS NECESSARY TO CONDUCT THE  
17 CLIENT'S BUSINESS, TO DISCHARGE ANY OF THE CLIENT'S FIDUCIARY  
18 RESPONSIBILITIES, OR TO COMPLY WITH ANY LICENSURE REQUIREMENTS  
19 APPLICABLE TO THE CLIENT OR TO THE COVERED EMPLOYEES.

20 **20-302.**

21 (A) EXCEPT AS SPECIFICALLY PROVIDED IN THIS TITLE, THE  
22 CO-EMPLOYMENT RELATIONSHIP BETWEEN THE CLIENT AND THE  
23 PROFESSIONAL EMPLOYER ORGANIZATION, AND BETWEEN EACH CO-EMPLOYER  
24 AND EACH COVERED EMPLOYEE, SHALL BE GOVERNED BY THE PROFESSIONAL  
25 EMPLOYER AGREEMENT.

26 (B) EACH PROFESSIONAL EMPLOYER AGREEMENT SHALL INCLUDE THE  
27 FOLLOWING:

28 (1) THE ALLOCATION OF RIGHTS, DUTIES, AND OBLIGATIONS AS  
29 DESCRIBED IN § 20-301 OF THIS SUBTITLE;

30 (2) THE RESPONSIBILITY OF THE PROFESSIONAL EMPLOYER  
31 ORGANIZATION TO:

32 (I) PAY WAGES TO COVERED EMPLOYEES;

33 (II) WITHHOLD, COLLECT, REPORT, AND REMIT  
34 PAYROLL-RELATED AND UNEMPLOYMENT TAXES; AND

1                   (III) THE EXTENT THE PROFESSIONAL EMPLOYER  
2 ORGANIZATION HAS ASSUMED RESPONSIBILITY IN THE PROFESSIONAL  
3 EMPLOYER AGREEMENT, TO MAKE PAYMENTS FOR EMPLOYEE BENEFITS FOR  
4 COVERED EMPLOYEES;

5                   (3) THAT THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL  
6 HAVE A RIGHT TO HIRE, DISCIPLINE, AND TERMINATE A COVERED EMPLOYEE,  
7 AS MAY BE NECESSARY TO FULFILL THE PROFESSIONAL EMPLOYER  
8 ORGANIZATION'S RESPONSIBILITIES UNDER THIS TITLE AND THE  
9 PROFESSIONAL EMPLOYER AGREEMENT AND THE CLIENT SHALL HAVE A RIGHT  
10 TO HIRE, DISCIPLINE, AND TERMINATE A COVERED EMPLOYEE; AND

11                   (4) THAT THE RESPONSIBILITY TO OBTAIN WORKERS'  
12 COMPENSATION COVERAGE FOR COVERED EMPLOYEES, FROM A CARRIER  
13 LICENSED TO DO BUSINESS IN THIS STATE AND OTHERWISE IN COMPLIANCE  
14 WITH ALL APPLICABLE REQUIREMENTS, SHALL BE SPECIFICALLY ALLOCATED  
15 TO EITHER THE CLIENT OR THE PROFESSIONAL EMPLOYER ORGANIZATION IN  
16 THE PROFESSIONAL EMPLOYER AGREEMENT.

17 **20-303.**

18                   WITH RESPECT TO EACH PROFESSIONAL EMPLOYER AGREEMENT  
19 ENTERED INTO BY A PROFESSIONAL EMPLOYER ORGANIZATION, THE  
20 PROFESSIONAL EMPLOYER ORGANIZATION SHALL PROVIDE WRITTEN NOTICE  
21 TO EACH COVERED EMPLOYEE AFFECTED BY THE AGREEMENT OF THE GENERAL  
22 NATURE OF THE CO-EMPLOYMENT RELATIONSHIP BETWEEN AND AMONG THE  
23 PROFESSIONAL EMPLOYER ORGANIZATION, THE CLIENT, AND THE COVERED  
24 EMPLOYEE.

25 **20-304.**

26                   (A) EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED BY THE  
27 APPLICABLE PROFESSIONAL EMPLOYER AGREEMENT:

28                   (1) A CLIENT SHALL BE SOLELY RESPONSIBLE FOR THE QUALITY,  
29 ADEQUACY, OR SAFETY OF THE GOODS OR SERVICES PRODUCED OR SOLD IN  
30 THE CLIENT'S BUSINESS;

31                   (2) A CLIENT SHALL BE SOLELY RESPONSIBLE FOR DIRECTING,  
32 SUPERVISING, TRAINING, AND CONTROLLING THE WORK OF THE COVERED  
33 EMPLOYEES WITH RESPECT TO THE BUSINESS ACTIVITIES OF THE CLIENT AND  
34 SOLELY RESPONSIBLE FOR THE ACTS, ERRORS, OR OMISSIONS OF THE COVERED  
35 EMPLOYEES WITH REGARD TO THE ACTIVITIES;

1           (3) A CLIENT IS NOT LIABLE FOR THE ACTS, ERRORS, OR  
2 OMISSIONS OF A PROFESSIONAL EMPLOYER ORGANIZATION, OR OF ANY  
3 COVERED EMPLOYEE OF THE CLIENT AND A PROFESSIONAL EMPLOYER  
4 ORGANIZATION WHEN THE COVERED EMPLOYEE IS ACTING UNDER THE  
5 EXPRESS DIRECTION AND CONTROL OF THE PROFESSIONAL EMPLOYER  
6 ORGANIZATION; AND

7           (4) A PROFESSIONAL EMPLOYER ORGANIZATION IS NOT LIABLE  
8 FOR THE ACTS, ERRORS, OR OMISSIONS OF A CLIENT OR OF ANY COVERED  
9 EMPLOYEE OF THE CLIENT WHEN THE COVERED EMPLOYEE IS ACTING UNDER  
10 THE EXPRESS DIRECTION AND CONTROL OF THE CLIENT.

11           (B) THIS SECTION DOES NOT SERVE TO LIMIT ANY CONTRACTUAL  
12 LIABILITY OR OBLIGATION SPECIFICALLY PROVIDED IN THE WRITTEN  
13 PROFESSIONAL EMPLOYER AGREEMENT.

14           (C) A COVERED EMPLOYEE IS NOT, SOLELY AS THE RESULT OF BEING A  
15 COVERED EMPLOYEE OF A PROFESSIONAL EMPLOYER ORGANIZATION, AN  
16 EMPLOYEE OF THE PROFESSIONAL EMPLOYER ORGANIZATION FOR PURPOSES  
17 OF GENERAL LIABILITY INSURANCE, FIDELITY BONDS, SURETY BONDS,  
18 EMPLOYER'S LIABILITY THAT IS NOT COVERED BY WORKERS' COMPENSATION,  
19 OR LIQUOR LIABILITY INSURANCE CARRIED BY THE PROFESSIONAL EMPLOYER  
20 ORGANIZATION UNLESS THE COVERED EMPLOYEES ARE INCLUDED BY SPECIFIC  
21 REFERENCE IN THE PROFESSIONAL EMPLOYER AGREEMENT AND APPLICABLE  
22 PREARRANGED EMPLOYMENT CONTRACT, INSURANCE CONTRACT, OR BOND.

23           **20-305.**

24           A PROFESSIONAL EMPLOYER ORGANIZATION ACTING UNDER THE  
25 PROVISIONS OF THIS TITLE IS NOT ENGAGED IN THE SALE OF INSURANCE OR IN  
26 ACTING AS A THIRD PARTY ADMINISTRATOR BY OFFERING, MARKETING,  
27 SELLING, ADMINISTERING, OR PROVIDING PROFESSIONAL EMPLOYER  
28 SERVICES, INCLUDING SERVICES AND EMPLOYEE BENEFIT PLANS FOR COVERED  
29 EMPLOYEES.

30                           **SUBTITLE 4. PROHIBITED ACTS; PENALTIES.**

31           **20-401.**

32           (A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY  
33 NOT ACT AS, OFFER TO ACT AS, OR HOLD ITSELF OUT AS A PROFESSIONAL  
34 EMPLOYER ORGANIZATION IN THE STATE UNLESS THE PERSON IS REGISTERED  
35 UNDER THIS TITLE.

1           **(B) A PERSON MAY NOT KNOWINGLY MAKE A FALSE REPRESENTATION**  
2 **OR FALSE STATEMENT IN AN APPLICATION FOR AN INITIAL REGISTRATION OR**  
3 **THE RENEWAL OF A REGISTRATION AS REQUIRED UNDER THIS SECTION.**

4           **(C) A PERSON THAT VIOLATES THIS SECTION IS GUILTY OF A**  
5 **MISDEMEANOR AND ON FIRST CONVICTION IS SUBJECT TO A FINE NOT**  
6 **EXCEEDING \$1,000, AND ON SECOND OR SUBSEQUENT CONVICTION IS SUBJECT**  
7 **TO A FINE NOT EXCEEDING \$5,000.**

8 **20-402.**

9           **(A) SUBJECT TO THE NOTICE AND HEARING PROVISIONS OF TITLE 10,**  
10 **SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, THE SECRETARY MAY**  
11 **BRING A CIVIL ADMINISTRATIVE ACTION AGAINST A PERSON THAT VIOLATES**  
12 **THE PROVISIONS OF § 20-401 OF THIS SUBTITLE.**

13           **(B) AFTER A HEARING, IF THE SECRETARY FINDS THAT A PERSON HAS**  
14 **VIOLATED THE PROVISIONS OF § 20-401 OF THIS SUBTITLE, THE SECRETARY**  
15 **MAY:**

16                   **(1) ORDER THE PERSON TO CEASE AND DESIST FROM UNLAWFUL**  
17 **PRACTICE; AND**

18                   **(2) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$1,000 FOR**  
19 **EACH DAY OF UNLAWFUL PRACTICE.**

20           **(C) ANY PARTY AGGRIEVED BY A DECISION AND ORDER OF THE**  
21 **SECRETARY UNDER THIS SECTION MAY FILE AN APPEAL AS PROVIDED UNDER §§**  
22 **10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.**

23 **20-403.**

24           **A PERSON MAY NOT ADVERTISE IN ANY WAY THAT THE PERSON IS**  
25 **REGISTERED UNDER THIS TITLE UNLESS THE ADVERTISEMENT STATES THE**  
26 **PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION NUMBER OF THE**  
27 **PERSON IN THE ADVERTISEMENT.**

28 **20-404.**

29           **(A) THIS SECTION APPLIES ONLY IF THERE IS NO GREATER CRIMINAL**  
30 **PENALTY PROVIDED UNDER THIS SUBTITLE OR OTHER APPLICABLE LAW.**

1           **(B) A PERSON WHO ENGAGES IN REPEATED VIOLATIONS OF THIS**  
2 **SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A**  
3 **FINE NOT EXCEEDING \$2,500.**

4           SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall  
5 be construed as:

6           (1) Diminishing existing rights between covered employees and a  
7 client existing prior to the effective date of the professional employer agreement;

8           (2) Affecting or modifying the terms of a collective bargaining  
9 agreement;

10           (3) Creating any new or additional enforceable right of a covered  
11 employee against a professional employer organization that is not specifically provided  
12 by the professional employer agreement;

13           (4) Creating any new or additional enforceable right of a covered  
14 employee against a professional employer organization that is not specifically provided  
15 by the professional employer agreement or this Act; or

16           (5) Affecting the certification status of a minority-owned business  
17 enterprise that enters into an agreement as a claim of a professional employer  
18 organization or uses the services of a professional employer organization.

19           SECTION 3. AND BE IT FURTHER ENACTED, That a presently existing  
20 obligation or contract right may not be impaired in any way by this Act.

21           SECTION 4. AND BE IT FURTHER ENACTED, That a person who is required  
22 to be registered under this Act has 6 months after the effective date of this Act to  
23 comply with the requirements of Title 20 of the Business Regulation Article.

24           SECTION 5. AND BE IT FURTHER ENACTED, That, if any provision of this  
25 Act or the application thereof to any person or circumstance is held invalid for any  
26 reason in a court of competent jurisdiction, the invalidity does not affect other  
27 provisions or any other application of this Act which can be given effect without the  
28 invalid provision or application, and for this purpose the provisions of this Act are  
29 declared severable.

30           SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2009.