

# SENATE BILL 995

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CF HB 1056

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By: **Senator Garagiola**

Introduced and read first time: February 26, 2009

Assigned to: Rules

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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; providing that a certain covered  
31 employee is deemed solely an employee of the client for certain licensing,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 registration, or certification requirements; providing that a professional  
2 employer organization is not deemed to engage in certain activities solely on the  
3 basis of a co-employment relationship with a certain covered employee;  
4 providing that the client is entitled to the benefit of certain tax credits, economic  
5 incentives, or other benefits based on employment under certain circumstances;  
6 requiring professional employer organizations to provide certain employment  
7 information for certain purposes; prohibiting a person from acting as, offering to  
8 act as, or holding itself out as a professional employer organization in the State  
9 unless registered under this Act; prohibiting a person from knowingly making a  
10 false representation or false statement in certain applications; prohibiting a  
11 person from advertising in a certain manner; establishing certain criminal  
12 penalties; authorizing the Secretary to bring a certain civil administrative  
13 action against certain persons; defining certain terms; providing for the  
14 construction of this Act; prohibiting a presently existing obligation or contract  
15 right from being impaired by this Act; allowing certain persons a certain period  
16 of time after the effective date of this Act to register; making certain provisions  
17 of this Act severable; and generally relating to the regulation of professional  
18 employer organizations and professional employer agreements.

19 BY adding to

20 Article – Business Regulation

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

23 Annotated Code of Maryland

24 (2004 Replacement Volume and 2008 Supplement)

25 Preamble

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

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

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

36 **Article – Business Regulation**

37 **TITLE 20. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

38 **SUBTITLE 1. DEFINITIONS.**

1 **20-101.**

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (B) "CLIENT" MEANS A PERSON THAT ENTERS INTO A PROFESSIONAL  
5 EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

6 (C) "CO-EMPLOYER" MEANS EITHER A PROFESSIONAL EMPLOYER  
7 ORGANIZATION OR A CLIENT.

8 (D) (1) "CO-EMPLOYMENT RELATIONSHIP" MEANS AN ONGOING  
9 RELATIONSHIP IN WHICH THE RIGHTS, DUTIES, AND OBLIGATIONS OF AN  
10 EMPLOYER THAT ARISE OUT OF AN EMPLOYMENT RELATIONSHIP ARE  
11 ALLOCATED BETWEEN A PROFESSIONAL EMPLOYER ORGANIZATION AND A  
12 CLIENT IN ACCORDANCE WITH A PROFESSIONAL EMPLOYER AGREEMENT.

13 (2) "CO-EMPLOYMENT RELATIONSHIP" DOES NOT MEAN A  
14 TEMPORARY OR PROJECT-SPECIFIC RELATIONSHIP BETWEEN A PROFESSIONAL  
15 EMPLOYER ORGANIZATION AND A CLIENT.

16 (E) "COVERED EMPLOYEE" MEANS AN INDIVIDUAL WHO:

17 (1) HAS A CO-EMPLOYMENT RELATIONSHIP WITH A  
18 PROFESSIONAL EMPLOYER ORGANIZATION AND A CLIENT;

19 (2) HAS RECEIVED WRITTEN NOTICE OF THE CO-EMPLOYMENT  
20 WITH THE PROFESSIONAL EMPLOYER ORGANIZATION; AND

21 (3) HAS RECEIVED A WRITTEN SUMMARY OF THE OBLIGATIONS  
22 AND RESPONSIBILITIES OF THE CLIENT AND THE PROFESSIONAL EMPLOYER  
23 ORGANIZATION IN ACCORDANCE WITH THE PROFESSIONAL EMPLOYER  
24 AGREEMENT.

25 (F) "PROFESSIONAL EMPLOYER AGREEMENT" MEANS A WRITTEN  
26 CONTRACT BETWEEN A CLIENT AND A PROFESSIONAL EMPLOYER  
27 ORGANIZATION THAT PROVIDES:

28 (1) FOR THE CO-EMPLOYMENT OF COVERED EMPLOYEES;

29 (2) FOR THE ALLOCATION OF EMPLOYER RIGHTS AND  
30 OBLIGATIONS BETWEEN THE CLIENT AND THE PROFESSIONAL EMPLOYER  
31 ORGANIZATION WITH RESPECT TO THE COVERED EMPLOYEES; AND

1           **(3) THAT THE PROFESSIONAL EMPLOYER ORGANIZATION AND**  
2 **THE CLIENT ASSUME THE RESPONSIBILITIES REQUIRED BY THIS TITLE.**

3           **(G) (1) “PROFESSIONAL EMPLOYER ORGANIZATION” MEANS A**  
4 **PERSON THAT IS ENGAGED IN THE BUSINESS OF PROVIDING PROFESSIONAL**  
5 **EMPLOYER SERVICES.**

6           **(2) “PROFESSIONAL EMPLOYER ORGANIZATION” DOES NOT**  
7 **INCLUDE:**

8                   **(I) A PERSON THAT PROVIDES TEMPORARY HELP**  
9 **SERVICES;**

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

12                   **(III) AN ARRANGEMENT IN WHICH A PERSON, WHOSE**  
13 **PRINCIPAL BUSINESS ACTIVITY IS NOT ENTERING INTO PROFESSIONAL**  
14 **EMPLOYER ARRANGEMENTS, SHARES EMPLOYEES WITH A COMMONLY-OWNED**  
15 **COMPANY WITHIN THE MEANING OF § 414(B) AND (C) OF THE INTERNAL**  
16 **REVENUE CODE OF 1986; OR**

17                   **(IV) AN INDEPENDENT CONTRACTOR ARRANGEMENT IN**  
18 **WHICH A PERSON:**

19                           **1. ASSUMES RESPONSIBILITY FOR THE PRODUCT**  
20 **PRODUCED OR SERVICE PERFORMED BY THE PERSON OR AN AGENT OF THE**  
21 **PERSON; AND**

22                           **2. RETAINS AND EXERCISES PRIMARY DIRECTION**  
23 **AND CONTROL OVER THE WORK PERFORMED BY THE INDIVIDUALS WHOSE**  
24 **SERVICES ARE SUPPLIED BY THE ARRANGEMENTS.**

25           **(H) “PROFESSIONAL EMPLOYER ORGANIZATION GROUP” MEANS TWO**  
26 **OR MORE PROFESSIONAL EMPLOYER ORGANIZATIONS THAT ARE**  
27 **MAJORITY-OWNED OR COMMONLY CONTROLLED BY THE SAME ENTITY, PARENT**  
28 **ENTITY, OR CONTROLLING PERSONS.**

29           **(I) “PROFESSIONAL EMPLOYER SERVICES” MEANS THE SERVICE OF**  
30 **ENTERING INTO CO-EMPLOYMENT RELATIONSHIPS IN WHICH ALL OR A**  
31 **MAJORITY OF THE EMPLOYEES PROVIDING SERVICES TO A CLIENT OR DIVISION**  
32 **OR WORK UNIT OF A CLIENT ARE COVERED EMPLOYEES.**

1           **(J) “REGISTRANT” MEANS A PROFESSIONAL EMPLOYER ORGANIZATION**  
2 **REGISTERED UNDER THIS TITLE.**

3           **(K) “TEMPORARY HELP SERVICES” MEANS SERVICES THAT CONSIST OF**  
4 **A PERSON:**

5                   **(1) RECRUITING AND HIRING ITS OWN EMPLOYEES;**

6                   **(2) FINDING OTHER ORGANIZATIONS THAT NEED THE SERVICES**  
7 **OF THOSE EMPLOYEES;**

8                   **(3) ASSIGNING THOSE EMPLOYEES TO PERFORM WORK AT OR**  
9 **SERVICES FOR THE OTHER ORGANIZATIONS TO SUPPORT OR SUPPLEMENT THE**  
10 **OTHER ORGANIZATIONS’ WORKFORCES, OR TO PROVIDE ASSISTANCE IN**  
11 **SPECIAL WORK SITUATIONS INCLUDING EMPLOYEE ABSENCES, SKILL**  
12 **SHORTAGES, SEASONAL WORKLOADS, OR TO PERFORM SPECIAL ASSIGNMENTS**  
13 **OR PROJECTS; AND**

14                   **(4) CUSTOMARILY ATTEMPTING TO REASSIGN THE EMPLOYEES**  
15 **TO OTHER ORGANIZATIONS WHEN THEY FINISH EACH ASSIGNMENT.**

16                                   **SUBTITLE 2. REGISTRATION.**

17 **20-201.**

18           **(A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY**  
19 **NOT ENGAGE IN THE BUSINESS OF PROVIDING PROFESSIONAL EMPLOYER**  
20 **SERVICES IN THE STATE UNLESS THE PERSON IS REGISTERED AS A**  
21 **PROFESSIONAL EMPLOYER ORGANIZATION UNDER THIS TITLE.**

22           **(B) THE DEPARTMENT SHALL:**

23                   **(1) MAINTAIN A LIST OF ALL PROFESSIONAL EMPLOYER**  
24 **ORGANIZATIONS THAT ARE REGISTERED UNDER THIS TITLE; AND**

25                   **(2) MAKE THE LIST AVAILABLE TO THE PUBLIC ON THE**  
26 **INTERNET.**

27 **20-202.**

28           **(A) TO APPLY FOR REGISTRATION AS A PROFESSIONAL EMPLOYER**  
29 **ORGANIZATION, AN APPLICANT SHALL:**

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

3           (2)    **PAY THE NONREFUNDABLE APPLICATION FEE NOT TO EXCEED**  
4 **\$500.**

5           **(B) THE APPLICATION FOR REGISTRATION AS A PROFESSIONAL**  
6 **EMPLOYER ORGANIZATION SHALL REQUIRE AN APPLICANT TO PROVIDE:**

7           (1)    **THE NAME OR NAMES UNDER WHICH THE PROFESSIONAL**  
8 **EMPLOYER ORGANIZATION CONDUCTS BUSINESS;**

9           (2)    **THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE**  
10 **PROFESSIONAL EMPLOYER ORGANIZATION AND THE ADDRESS OF EACH OFFICE**  
11 **IT MAINTAINS IN THE STATE;**

12          (3)    **THE PROFESSIONAL EMPLOYER ORGANIZATION'S TAXPAYER**  
13 **OR EMPLOYER IDENTIFICATION NUMBER;**

14          (4)    **A LIST BY JURISDICTION OF EACH NAME UNDER WHICH THE**  
15 **PROFESSIONAL EMPLOYER ORGANIZATION HAS OPERATED IN THE PRECEDING 5**  
16 **YEARS, INCLUDING ANY ALTERNATIVE NAMES, NAMES OF PREDECESSORS, AND,**  
17 **IF KNOWN, SUCCESSOR BUSINESS ENTITIES;**

18          (5)    **A STATEMENT OF OWNERSHIP, INCLUDING THE NAME AND**  
19 **EVIDENCE OF THE BUSINESS EXPERIENCE OF ANY PERSON THAT, INDIVIDUALLY**  
20 **OR ACTING IN CONCERT WITH ONE OR MORE OTHER PERSONS, OWNS OR**  
21 **CONTROLS, DIRECTLY OR INDIRECTLY, 25% OR MORE OF THE EQUITY**  
22 **INTERESTS OF THE PROFESSIONAL EMPLOYER ORGANIZATION;**

23          (6)    **A STATEMENT OF MANAGEMENT, INCLUDING THE NAME AND**  
24 **EVIDENCE OF THE BUSINESS EXPERIENCE OF ANY PERSON WHO SERVES AS**  
25 **PRESIDENT, CHIEF EXECUTIVE OFFICER, OR OTHERWISE HAS THE AUTHORITY**  
26 **TO ACT AS SENIOR EXECUTIVE OFFICER OF THE PROFESSIONAL EMPLOYER**  
27 **ORGANIZATION;**

28          (7)    **A FINANCIAL STATEMENT THAT SETS FORTH THE FINANCIAL**  
29 **CONDITION OF THE PROFESSIONAL EMPLOYER ORGANIZATION OR**  
30 **PROFESSIONAL EMPLOYER GROUP; AND**

31          (8)    **A STATEMENT THAT DEMONSTRATES THAT THE**  
32 **PROFESSIONAL EMPLOYER ORGANIZATION MAINTAINS POSITIVE WORKING**  
33 **CAPITAL AS DEFINED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.**

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

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

4           (3) AFTER THE INITIAL REGISTRATION, A PROFESSIONAL  
5 EMPLOYER ORGANIZATION OR PROFESSIONAL EMPLOYER GROUP SHALL FILE  
6 ON AN ANNUAL BASIS, WITHIN 180 DAYS AFTER THE END OF THE PROFESSIONAL  
7 EMPLOYER ORGANIZATION'S OR PROFESSIONAL EMPLOYER ORGANIZATION  
8 GROUP'S FISCAL YEAR, A SUCCEEDING AUDIT.

9           (4) AN APPLICANT MAY APPLY FOR AN EXTENSION WITH THE  
10 DEPARTMENT, BUT THE REQUEST SHALL BE ACCOMPANIED BY A LETTER FROM  
11 THE AUDITORS THAT STATES THE REASONS FOR THE DELAY AND THE  
12 ANTICIPATED AUDIT COMPLETION DATE.

13           (5) THE FINANCIAL STATEMENT SHALL:

14                   (I) BE PREPARED IN ACCORDANCE WITH GENERALLY  
15 ACCEPTED ACCOUNTING PRINCIPLES;

16                   (II) BE AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC  
17 ACCOUNTANT LICENSED TO PRACTICE IN THE JURISDICTION IN WHICH THE  
18 ACCOUNTANT IS LOCATED; AND

19                   (III) BE WITHOUT QUALIFICATION AS TO THE GOING  
20 CONCERN STATUS OF THE PROFESSIONAL EMPLOYER ORGANIZATION.

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

24           (7) A PROFESSIONAL EMPLOYER ORGANIZATION THAT HAS NOT  
25 HAD SUFFICIENT OPERATING HISTORY TO HAVE AUDITED FINANCIALS BASED  
26 ON AT LEAST 12 MONTHS OF OPERATING HISTORY SHALL:

27                   (I) MEET THE FINANCIAL CAPACITY REQUIREMENTS OF  
28 SUBSECTION (B)(8) OF THIS SECTION; AND

29                   (II) PRESENT FINANCIAL STATEMENTS REVIEWED BY A  
30 CERTIFIED PUBLIC ACCOUNTANT.

31   **20-203.**

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

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

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

9                   (1) A RENEWAL APPLICATION FORM; AND

10                   (2) A NOTICE THAT STATES:

11                           (I) THE DATE ON WHICH THE CURRENT REGISTRATION  
12 EXPIRES; AND

13                           (II) THE DATE BY WHICH THE DEPARTMENT MUST RECEIVE  
14 THE RENEWAL APPLICATION FOR A RENEWAL TO BE ISSUED AND MAILED  
15 BEFORE THE REGISTRATION EXPIRES.

16           (C) THE DEPARTMENT SHALL RENEW THE REGISTRATION OF EACH  
17 REGISTRANT THAT:

18                   (1) SUBMITS TO THE DEPARTMENT A RENEWAL APPLICATION ON  
19 THE FORM PROVIDED BY THE DEPARTMENT;

20                   (2) OTHERWISE IS ENTITLED TO BE REGISTERED; AND

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

23 **20-204.**

24           (A) A PROFESSIONAL EMPLOYER ORGANIZATION MAY APPLY FOR A  
25 LIMITED REGISTRATION UNDER THIS SECTION IF THE PROFESSIONAL  
26 EMPLOYER ORGANIZATION:

27                   (1) RESIDES OUTSIDE THIS STATE AND IS LICENSED OR  
28 REGISTERED AS A PROFESSIONAL EMPLOYER ORGANIZATION IN ANOTHER  
29 STATE;



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

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

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

6                 (1) SUBMIT TO THE DEPARTMENT UNDER OATH AN APPLICATION  
7 ON THE FORM PROVIDED BY THE DEPARTMENT; AND

8                 (2) PAY TO THE DEPARTMENT THE NONREFUNDABLE  
9 APPLICATION FEE NOT TO EXCEED \$250.

10           (C) (1) UNLESS RENEWED UNDER THIS SUBSECTION, A LIMITED  
11 REGISTRATION EXPIRES ON THE FIRST ANNIVERSARY OF ITS EFFECTIVE DATE.

12                 (2) A REGISTRANT THAT MEETS THE REQUIREMENTS OF THIS  
13 SUBSECTION MAY OBTAIN A RENEWAL OF A LIMITED REGISTRATION BEFORE  
14 THE LIMITED REGISTRATION EXPIRES FOR AN ADDITIONAL 1-YEAR TERM.

15                 (3) AT LEAST 60 DAYS BEFORE A LIMITED REGISTRATION  
16 EXPIRES, THE DEPARTMENT SHALL MAIL THE REGISTRANT, AT THE LAST  
17 KNOWN ADDRESS OF THE REGISTRANT:

18                         (I) A RENEWAL APPLICATION FORM; AND

19                         (II) A NOTICE THAT STATES:

20                                 1. THE DATE ON WHICH THE CURRENT  
21 REGISTRATION EXPIRES; AND

22                                 2. THE DATE BY WHICH THE DEPARTMENT MUST  
23 RECEIVE THE RENEWAL APPLICATION FOR A RENEWAL TO BE ISSUED AND  
24 MAILED BEFORE THE REGISTRATION EXPIRES.

25           (4) THE DEPARTMENT SHALL RENEW THE LIMITED  
26 REGISTRATION OF EACH REGISTRANT THAT:

27                         (I) SUBMITS TO THE DEPARTMENT A RENEWAL  
28 APPLICATION ON THE FORM PROVIDED BY THE DEPARTMENT;

29                         (II) OTHERWISE IS ENTITLED TO A LIMITED REGISTRATION;  
30 AND

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

3 **20-205.**

4 (A) THE SECRETARY MAY DENY REGISTRATION OR A REGISTRATION  
5 CERTIFICATE TO AN APPLICANT, REPRIMAND A REGISTRANT, SUSPEND OR  
6 REVOKE A REGISTRATION OR A REGISTRATION CERTIFICATE, OR IMPOSE A  
7 CIVIL PENALTY ON A REGISTRANT IF THE SECRETARY DETERMINES THAT THE  
8 APPLICANT OR REGISTRANT:

9 (1) FRAUDULENTLY OR DECEPTIVELY OBTAINED OR ATTEMPTED  
10 TO OBTAIN A REGISTRATION OR REGISTRATION CERTIFICATE;

11 (2) FRAUDULENTLY OR DECEPTIVELY USED A REGISTRATION OR  
12 REGISTRATION CERTIFICATE;

13 (3) PRESENTED OR ATTEMPTED TO PRESENT THE PROFESSIONAL  
14 EMPLOYER ORGANIZATION REGISTRATION NUMBER OF ANOTHER REGISTRANT  
15 AS THE APPLICANT'S OR REGISTRANT'S PROFESSIONAL EMPLOYER  
16 ORGANIZATION REGISTRATION NUMBER;

17 (4) USED OR ATTEMPTED TO USE AN EXPIRED, SUSPENDED, OR  
18 REVOKED PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION NUMBER  
19 OR REGISTRATION CERTIFICATE;

20 (5) KNOWINGLY MADE A MATERIAL MISREPRESENTATION TO THE  
21 SECRETARY OR ANY OTHER DEPARTMENT OR UNIT OF THE STATE;

22 (6) KNOWINGLY AND REPEATEDLY VIOLATED THIS TITLE OR ANY  
23 REGULATIONS ADOPTED UNDER THIS TITLE;

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

27 (8) HAS BEEN CONVICTED OF A CRIME RELATING TO THE  
28 OPERATION OF A PROFESSIONAL EMPLOYER ORGANIZATION OR THE ABILITY OF  
29 A PROFESSIONAL EMPLOYER ORGANIZATION TO PROVIDE PROFESSIONAL  
30 EMPLOYER SERVICES;

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

4           **(10) HAD A SIMILAR REGISTRATION, REGISTRATION CERTIFICATE,**  
5 **OR LICENSE DENIED, SUSPENDED, OR REVOKED IN ANOTHER STATE OR**  
6 **JURISDICTION; OR**

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

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

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

15           **20-301.**

16           **(A) EXCEPT AS SPECIFICALLY PROVIDED IN THIS TITLE OR IN THE**  
17 **PROFESSIONAL EMPLOYER AGREEMENT, IN EACH CO-EMPLOYMENT**  
18 **RELATIONSHIP:**

19           **(1) THE CLIENT SHALL BE ENTITLED TO EXERCISE ALL RIGHTS**  
20 **AND SHALL BE OBLIGATED TO PERFORM ALL DUTIES AND RESPONSIBILITIES**  
21 **OTHERWISE APPLICABLE TO AN EMPLOYER IN AN EMPLOYMENT RELATIONSHIP;**  
22 **AND**

23           **(2) THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL BE**  
24 **ENTITLED TO EXERCISE ONLY THOSE RIGHTS, AND OBLIGATED TO PERFORM**  
25 **ONLY THOSE DUTIES AND RESPONSIBILITIES, SPECIFICALLY REQUIRED BY THIS**  
26 **TITLE OR SET FORTH IN THE PROFESSIONAL EMPLOYER AGREEMENT.**

27           **(B) THE RIGHTS, DUTIES, AND OBLIGATIONS OF THE PROFESSIONAL**  
28 **EMPLOYER ORGANIZATION AS CO-EMPLOYER WITH RESPECT TO ANY COVERED**  
29 **EMPLOYEE SHALL BE LIMITED TO THOSE ARISING UNDER THE PROFESSIONAL**  
30 **EMPLOYER AGREEMENT AND THIS TITLE DURING THE TERM OF**  
31 **CO-EMPLOYMENT BY THE PROFESSIONAL EMPLOYER ORGANIZATION OF THE**  
32 **COVERED EMPLOYEE.**

33           **(C) UNLESS OTHERWISE EXPRESSLY AGREED BY THE PROFESSIONAL**  
34 **EMPLOYER ORGANIZATION AND THE CLIENT IN A PROFESSIONAL EMPLOYER**

1 AGREEMENT, THE CLIENT RETAINS THE EXCLUSIVE RIGHT TO DIRECT AND  
2 CONTROL THE COVERED EMPLOYEES AS IS NECESSARY TO:

3 (1) CONDUCT THE CLIENT'S BUSINESS;

4 (2) DISCHARGE ANY OF THE CLIENT'S FIDUCIARY  
5 RESPONSIBILITIES; OR

6 (3) COMPLY WITH ANY LICENSURE REQUIREMENTS APPLICABLE  
7 TO THE CLIENT OR THE COVERED EMPLOYEES.

8 **20-302.**

9 (A) EXCEPT AS SPECIFICALLY PROVIDED IN THIS TITLE, THE  
10 CO-EMPLOYMENT RELATIONSHIP BETWEEN THE CLIENT AND THE  
11 PROFESSIONAL EMPLOYER ORGANIZATION, AND BETWEEN EACH CO-EMPLOYER  
12 AND EACH COVERED EMPLOYEE, SHALL BE GOVERNED BY THE PROFESSIONAL  
13 EMPLOYER AGREEMENT.

14 (B) EACH PROFESSIONAL EMPLOYER AGREEMENT SHALL INCLUDE THE  
15 FOLLOWING:

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

18 (2) THE RESPONSIBILITY OF THE PROFESSIONAL EMPLOYER  
19 ORGANIZATION:

20 (I) TO PAY WAGES TO COVERED EMPLOYEES;

21 (II) TO WITHHOLD, COLLECT, REPORT, AND REMIT  
22 PAYROLL-RELATED AND UNEMPLOYMENT TAXES; AND

23 (III) TO THE EXTENT THE PROFESSIONAL EMPLOYER  
24 ORGANIZATION HAS ASSUMED RESPONSIBILITY IN THE PROFESSIONAL  
25 EMPLOYER AGREEMENT, TO MAKE PAYMENTS FOR EMPLOYEE BENEFITS FOR  
26 COVERED EMPLOYEES;

27 (3) THAT:

28 (I) THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL  
29 HAVE A RIGHT TO HIRE, DISCIPLINE, AND TERMINATE A COVERED EMPLOYEE,  
30 AS MAY BE NECESSARY TO FULFILL THE PROFESSIONAL EMPLOYER

1 ORGANIZATION'S RESPONSIBILITIES UNDER THIS TITLE AND THE  
2 PROFESSIONAL EMPLOYER AGREEMENT; AND

3 (II) THE CLIENT SHALL HAVE A RIGHT TO HIRE, DISCIPLINE,  
4 AND TERMINATE A COVERED EMPLOYEE; AND

5 (4) THAT THE RESPONSIBILITY TO OBTAIN WORKERS'  
6 COMPENSATION COVERAGE FOR COVERED EMPLOYEES, FROM A CARRIER  
7 LICENSED TO DO BUSINESS IN THIS STATE AND OTHERWISE IN COMPLIANCE  
8 WITH ALL APPLICABLE REQUIREMENTS, SHALL BE SPECIFICALLY ALLOCATED  
9 TO EITHER THE CLIENT OR THE PROFESSIONAL EMPLOYER ORGANIZATION IN  
10 THE PROFESSIONAL EMPLOYER AGREEMENT.

11 **20-303.**

12 WITH RESPECT TO EACH PROFESSIONAL EMPLOYER AGREEMENT  
13 ENTERED INTO BY A PROFESSIONAL EMPLOYER ORGANIZATION, THE  
14 PROFESSIONAL EMPLOYER ORGANIZATION SHALL PROVIDE WRITTEN NOTICE  
15 TO EACH COVERED EMPLOYEE AFFECTED BY THE AGREEMENT OF THE GENERAL  
16 NATURE OF THE CO-EMPLOYMENT RELATIONSHIP BETWEEN AND AMONG THE  
17 PROFESSIONAL EMPLOYER ORGANIZATION, THE CLIENT, AND THE COVERED  
18 EMPLOYEE.

19 **20-304.**

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

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

25 (2) A CLIENT SHALL BE SOLELY RESPONSIBLE FOR DIRECTING,  
26 SUPERVISING, TRAINING, AND CONTROLLING THE WORK OF THE COVERED  
27 EMPLOYEES WITH RESPECT TO THE BUSINESS ACTIVITIES OF THE CLIENT AND  
28 SOLELY RESPONSIBLE FOR THE ACTS, ERRORS, OR OMISSIONS OF THE COVERED  
29 EMPLOYEES WITH REGARD TO THE ACTIVITIES;

30 (3) A CLIENT IS NOT LIABLE FOR THE ACTS, ERRORS, OR  
31 OMISSIONS OF A PROFESSIONAL EMPLOYER ORGANIZATION, OR OF ANY  
32 COVERED EMPLOYEE OF THE CLIENT AND A PROFESSIONAL EMPLOYER  
33 ORGANIZATION WHEN THE COVERED EMPLOYEE IS ACTING UNDER THE  
34 EXPRESS DIRECTION AND CONTROL OF THE PROFESSIONAL EMPLOYER  
35 ORGANIZATION; AND

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

5           **(B) THIS SECTION DOES NOT SERVE TO LIMIT ANY CONTRACTUAL**  
6 **LIABILITY OR OBLIGATION SPECIFICALLY PROVIDED IN THE WRITTEN**  
7 **PROFESSIONAL EMPLOYER AGREEMENT.**

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

17 **20-305.**

18           **A PROFESSIONAL EMPLOYER ORGANIZATION ACTING UNDER THE**  
19 **PROVISIONS OF THIS TITLE IS NOT ENGAGED IN THE SALE OF INSURANCE OR IN**  
20 **ACTING AS A THIRD PARTY ADMINISTRATOR BY OFFERING, MARKETING,**  
21 **SELLING, ADMINISTERING, OR PROVIDING PROFESSIONAL EMPLOYER**  
22 **SERVICES, INCLUDING SERVICES AND EMPLOYEE BENEFIT PLANS FOR COVERED**  
23 **EMPLOYEES.**

24 **20-306.**

25           **(A) THE PROVISIONS OF THIS TITLE OR THE PROVISIONS OF A**  
26 **PROFESSIONAL EMPLOYER AGREEMENT DO NOT AFFECT, MODIFY, OR AMEND**  
27 **ANY STATE, LOCAL, OR FEDERAL LICENSING, REGISTRATION, OR**  
28 **CERTIFICATION REQUIREMENT APPLICABLE TO A CLIENT OR COVERED**  
29 **EMPLOYEE.**

30           **(B) A COVERED EMPLOYEE WHO IS REQUIRED BY LAW TO BE LICENSED,**  
31 **REGISTERED, OR CERTIFIED IS DEEMED SOLELY AN EMPLOYEE OF THE CLIENT**  
32 **FOR PURPOSES OF THE LICENSE, REGISTRATION, OR CERTIFICATION**  
33 **REQUIREMENT.**

34           **(C) A PROFESSIONAL EMPLOYER ORGANIZATION IS NOT DEEMED TO**  
35 **ENGAGE IN AN OCCUPATION, TRADE, PROFESSION, OR OTHER ACTIVITY THAT IS**

1 SUBJECT TO LICENSING, REGISTRATION, OR CERTIFICATION REQUIREMENTS  
2 OR OTHERWISE REGULATED BY THE STATE SOLELY BY ENTERING INTO AND  
3 MAINTAINING A CO-EMPLOYMENT RELATIONSHIP WITH A COVERED EMPLOYEE  
4 WHO IS SUBJECT TO THE REQUIREMENTS OR REGULATION.

5 (D) (1) A CLIENT SHALL HAVE THE SOLE RIGHT TO DIRECT AND  
6 CONTROL:

7 (I) THE PROFESSIONAL OR LICENSED ACTIVITIES OF  
8 COVERED EMPLOYEES; AND

9 (II) THE CLIENT'S BUSINESS.

10 (2) THE COVERED EMPLOYEES AND CLIENTS SHALL REMAIN  
11 SUBJECT TO REGULATION BY THE REGULATORY OR GOVERNMENTAL ENTITY  
12 RESPONSIBLE FOR LICENSING, REGISTRATION, OR CERTIFICATION OF THE  
13 COVERED EMPLOYEES OR CLIENTS.

14 **20-307.**

15 (A) FOR PURPOSES OF DETERMINING TAX CREDITS AND OTHER  
16 ECONOMIC INCENTIVES PROVIDED BY THE STATE OR ITS SUBDIVISIONS AND  
17 BASED ON EMPLOYMENT, COVERED EMPLOYEES SHALL BE DEEMED EMPLOYEES  
18 SOLELY OF THE CLIENT.

19 (B) (1) THE CLIENT IS ENTITLED TO THE BENEFIT OF ANY TAX  
20 CREDIT, ECONOMIC INCENTIVE, OR OTHER BENEFIT THAT ARISES AS THE  
21 RESULT OF THE EMPLOYMENT OF COVERED EMPLOYEES OF THE CLIENT.

22 (2) NOTWITHSTANDING THAT THE PROFESSIONAL EMPLOYER  
23 ORGANIZATION IS THE REPORTING EMPLOYER TO THE INTERNAL REVENUE  
24 SERVICE, THE CLIENT SHALL CONTINUE TO QUALIFY FOR THE TAX CREDIT,  
25 ECONOMIC INCENTIVE, OR OTHER BENEFIT.

26 (C) (1) IF THE GRANT OR AMOUNT OF AN ECONOMIC INCENTIVE IS  
27 BASED ON THE NUMBER OF EMPLOYEES, THEN EACH CLIENT SHALL BE  
28 TREATED AS EMPLOYING ONLY THOSE COVERED EMPLOYEES CO-EMPLOYED BY  
29 THE CLIENT.

30 (2) COVERED EMPLOYEES WORKING FOR OTHER CLIENTS OF THE  
31 PROFESSIONAL EMPLOYER ORGANIZATION MAY NOT BE COUNTED.

1           (D) ON REQUEST OF A CLIENT OR AN AGENCY OF THE STATE OR ITS  
2 SUBDIVISIONS, EACH PROFESSIONAL EMPLOYER ORGANIZATION SHALL  
3 PROVIDE EMPLOYMENT INFORMATION THAT IS:

4           (1) REASONABLY REQUIRED FOR ADMINISTRATION OF THE TAX  
5 CREDIT OR ECONOMIC INCENTIVE; OR

6           (2) NECESSARY TO SUPPORT A REQUEST, CLAIM, APPLICATION,  
7 OR OTHER ACTION BY A CLIENT THAT SEEKS THE TAX CREDIT OR ECONOMIC  
8 INCENTIVE.

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

10           **20-401.**

11           (A) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY  
12 NOT ACT AS, OFFER TO ACT AS, OR HOLD ITSELF OUT AS A PROFESSIONAL  
13 EMPLOYER ORGANIZATION IN THE STATE UNLESS THE PERSON IS REGISTERED  
14 UNDER THIS TITLE.

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

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

22           **20-402.**

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

27           (B) AFTER A HEARING, IF THE SECRETARY FINDS THAT A PERSON HAS  
28 VIOLATED THE PROVISIONS OF § 20-401 OF THIS SUBTITLE, THE SECRETARY  
29 MAY:

30           (1) ORDER THE PERSON TO CEASE AND DESIST FROM UNLAWFUL  
31 PRACTICE; AND



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

3           **(C) ANY PARTY AGGRIEVED BY A DECISION AND ORDER OF THE**  
4 **SECRETARY UNDER THIS SECTION MAY FILE AN APPEAL AS PROVIDED UNDER §§**  
5 **10-222 AND 10-223 OF THE STATE GOVERNMENT ARTICLE.**

6 **20-403.**

7           **A PERSON MAY NOT ADVERTISE IN ANY WAY THAT THE PERSON IS**  
8 **REGISTERED UNDER THIS TITLE UNLESS THE ADVERTISEMENT STATES THE**  
9 **PROFESSIONAL EMPLOYER ORGANIZATION REGISTRATION NUMBER OF THE**  
10 **PERSON IN THE ADVERTISEMENT.**

11 **20-404.**

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

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

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

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

21           (2) Affecting or modifying the terms of a collective bargaining  
22 agreement;

23           (3) Creating any new or additional enforceable right of a covered  
24 employee against a professional employer organization that is not specifically provided  
25 by the professional employer agreement or this Act; or

26           (4) Affecting the certification status of a minority-owned business  
27 enterprise that enters into an agreement as a claim of a professional employer  
28 organization or uses the services of a professional employer organization.

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

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

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

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