

By: Senator(s) McLendon

To: Insurance

SENATE BILL NO. 2861

1 AN ACT TO CREATE THE "MISSISSIPPI PROFESSIONAL EMPLOYER
 2 ORGANIZATION RECOGNITION AND REGISTRATION ACT"; TO PROVIDE
 3 LEGISLATIVE FINDINGS; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO
 4 PROVIDE LIMITATIONS OF THE PROFESSIONAL EMPLOYER ORGANIZATION AND
 5 CO-EMPLOYMENT RELATIONSHIP; TO REQUIRE REGISTRATION WITH THE
 6 DEPARTMENT OF INSURANCE; TO PROVIDE REGISTRATION FEES; TO REQUIRE
 7 EACH PEO OR PEO GROUP TO MAINTAIN A MINIMUM AMOUNT OF WORKING
 8 CAPITAL OR OTHER FINANCIAL REQUIREMENTS; TO PROVIDE RIGHTS AND
 9 DUTIES OF EMPLOYER, EMPLOYEE AND CLIENT; TO PROHIBIT CERTAIN ACTS
 10 AND TO AUTHORIZE THE DEPARTMENT OF INSURANCE TO TAKE DISCIPLINARY
 11 ACTIONS FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** This act shall be known and may be cited as the
 14 "Mississippi Professional Employer Organization Recognition and
 15 Registration Act."

16 **SECTION 2.** The Legislature hereby finds:

17 (a) That professional employer organizations provide a
 18 valuable service to commerce and the citizens of this state by
 19 increasing the opportunities of employers to develop
 20 cost-effective methods of satisfying their personnel requirements
 21 and providing employees with access to certain employment benefits
 22 which might otherwise not be available to them; and



23 (b) That professional employer organizations operating
24 in this state should be properly recognized and regulated by the
25 Department of Insurance as provided in this act.

26 **SECTION 3.** As used in this act:

27 (a) "Client" means any person who enters into a
28 professional employer agreement with a professional employer
29 organization.

30 (b) "Co-employer" means either a professional employer
31 organization or a client.

32 (c) "Co-employment relationship" means a relationship
33 which is intended to be an ongoing relationship rather than a
34 temporary or project-specific one, wherein the rights, duties, and
35 obligations of an employer which arise out of an employment
36 relationship have been allocated between co-employers pursuant to
37 a professional employer agreement and this act. In such a
38 co-employment relationship:

39 (i) The professional employer organization is
40 entitled to enforce only such employer rights, and is subject to
41 only those obligations specifically allocated to the professional
42 employer organization by the professional employer agreement or
43 this act;

44 (ii) The client is entitled to enforce those
45 rights, and obligated to provide and perform those employer
46 obligations allocated to such client by the professional employer
47 agreement and this act; and



48 (iii) The client is entitled to enforce any right
49 and obligated to perform any obligation of an employer not
50 specifically allocated to the professional employer organization
51 by the professional employer agreement or this act.

52 (d) "Commissioner" means the Commissioner of Insurance
53 of the State of Mississippi.

54 (e) "Controlling person" means:

55 (i) Any natural person who possesses, directly or
56 indirectly, the power to direct or cause the direction of the
57 management or policies of any PEO, including, but not limited to:

58 1. Direct or indirect control of fifty
59 percent (50%) or more of the voting securities of the PEO; and

60 2. The general power to endorse any
61 negotiable instrument payable to or on behalf of the PEO or to
62 cause the direction of the management or policies of any PEO; or

63 (ii) Any natural person employed, appointed or
64 authorized by a CEO to enter into a contractual relationship with
65 a client company on behalf of the PEO.

66 (f) "Covered employee" means an individual having a
67 co-employment relationship with a professional employer
68 organization and a client who meets all of the following criteria:

69 (i) the individual has received written notice of co-employment
70 with the professional employer organization, and (ii) the

71 individual's co-employment relationship is pursuant to a
72 professional employer agreement subject to this act. Individuals



73 who are officers, directors, shareholders, partners, and managers
74 of the client will be covered employees, except to the extent the
75 professional employer organization and the client have expressly
76 agreed in the professional employer agreement that such
77 individuals would not be covered employees, provided such
78 individuals meet the criteria of this paragraph and act as
79 operational managers or perform day-to-day operational services
80 for the client.

81 (g) "Department" means the Department of Insurance.

82 (h) "PEO group" means two (2) or more professional
83 employer organizations that are majority owned or commonly
84 controlled by the same entity, parent, or controlling person.

85 (i) "Person" means any individual, partnership,
86 corporation, limited liability company, association, or any other
87 form of legally recognized entity.

88 (j) "Professional employer agreement" means a written
89 contract by and between a client and a professional employer
90 organization that provides:

91 (i) For the co-employment of covered employees;

92 (ii) For the allocation of employer rights and
93 obligations between the client and the professional employer
94 organization with respect to the covered employees; and

95 (iii) That the professional employer organization
96 and the client assume the responsibilities required by this act.



97 (k) "Professional employer organization" or "PEO" means
98 any person engaged in the business of providing professional
99 employer services. A person engaged in the business of providing
100 professional employer services shall be subject to registration
101 and regulation under this act regardless of its use of the term or
102 conducting business as a "professional employer organization,"
103 "PEO," "staff-leasing company," "registered staff-leasing
104 company," "employee-leasing company," "administrative employer" or
105 any other name. The following shall not be deemed to be
106 professional employer organizations or the providing of
107 professional employment services for purposes of this act:

108 (i) Arrangements wherein a person, whose principal
109 business activity is not entering into professional employer
110 arrangements and which does not hold itself out as a PEO, shares
111 employees with a commonly owned company within the meaning of
112 Section 414(b) and (c) of the Internal Revenue Code of 1986, as
113 amended;

114 (ii) Independent contractor arrangements by which
115 a person assumes responsibility for the product produced or
116 service performed by such person or his agents and retains and
117 exercises primary direction and control over the work performed by
118 the individuals whose services are supplied under such
119 arrangements; or

120 (iii) Providing temporary help services.



121 (l) "Professional employer services" means the service
122 of entering into co-employment relationships under this act in
123 which all or a majority of the employees providing services to a
124 client or to a division or work unit of client are covered
125 employees.

126 (m) "Registrant" means a PEO registered under this act.

127 (n) "Temporary help services" means services consisting
128 of a person:

129 (i) Recruiting and hiring its own employees;

130 (ii) Finding other organizations that need the
131 services of those employees;

132 (iii) Assigning those employees to perform work at
133 or services for the other organizations to support or supplement
134 the other organizations' workforces, or to provide assistance in
135 special work situations such as, but not limited to, employee
136 absences, skill shortages, seasonal workloads, or to perform
137 special assignments or projects; and

138 (iv) Customarily attempting to reassign the
139 employees to other organizations when they finish each assignment.

140 **SECTION 4.** (1) Nothing contained in this act or in any
141 professional employer agreement shall affect, modify or amend any
142 collective bargaining agreement, or the rights or obligations of
143 any client, PEO or covered employee under the federal National
144 Labor Relations Act, the federal Railway Labor Act or Section
145 71-1-47.



146 (2) Nothing in this act or in any professional employer
147 agreement shall:

148 (a) Diminish, abolish or remove rights of covered
149 employees to a client or obligations of such client to a covered
150 employee existing prior to the effective date of the professional
151 employer agreement.

152 (b) Affect, modify or amend any contractual
153 relationship or restrictive covenant between a covered employee
154 and any client in effect at the time a professional employer
155 agreement becomes effective, nor shall it prohibit or amend any
156 contractual relationship or restrictive covenant that is entered
157 into subsequently between a client and a covered employee. A PEO
158 shall have no responsibility or liability in connection with, or
159 arising out of, any such existing or new contractual relationship
160 or restrictive covenant unless the PEO has specifically agreed
161 otherwise in writing.

162 (c) Create any new or additional enforceable right of a
163 covered employee against a PEO that is not specifically provided
164 by the professional employer agreement or this act.

165 (3) Nothing contained in this act or any professional
166 employer agreement shall affect, modify or amend any state, local
167 or federal licensing, registration or certification requirement
168 applicable to any client or covered employee.

169 (a) A covered employee who must be licensed, registered
170 or certified according to law or regulation is deemed solely an



171 employee of the client for purposes of any such license,
172 registration, or certification requirement.

173 (b) A PEO shall not be deemed to engage in any
174 occupation, trade, profession or other activity that is subject to
175 licensing, registration or certification requirements, or is
176 otherwise regulated by a governmental entity solely by entering
177 into and maintaining a co-employment relationship with a covered
178 employee who is subject to such requirements or regulation.

179 (c) A client shall have the sole right of direction and
180 control of the professional or licensed activities of covered
181 employees and of the client's business. Such covered employees
182 and clients shall remain subject to regulation by the regulatory
183 or governmental entity responsible for licensing, registration or
184 certification of such covered employees or clients.

185 (4) For purposes of determination of tax credits and other
186 economic incentives provided by this state or other government
187 entity and based on employment, covered employees shall be deemed
188 employees solely of the client. A client shall be entitled to the
189 benefit of any tax credit, economic incentive, or other benefit
190 arising as the result of the employment of covered employees of
191 such client. Notwithstanding that the PEO is the W-2 reporting
192 employer, the client shall continue to qualify for such benefit,
193 incentive or credit. If the grant or amount of any such incentive
194 is based on number of employees, then each client shall be treated
195 as employing only those covered employees co-employed by the



196 client. Covered employees working for other clients of the PEO
197 shall not be counted. Each PEO will provide, upon request by a
198 client or an agency or department of this state, employment
199 information reasonably required by any agency or department of
200 this state responsible for administration of any such tax credit
201 or economic incentive and necessary to support any request, claim,
202 application or other action by a client seeking any such tax
203 credit or economic incentive.

204 (5) With respect to a bid, contract, purchase order or
205 agreement entered into with the state or a political subdivision
206 of the state, a client company's status or certification as a
207 small, minority-owned, disadvantaged or woman-owned business
208 enterprise or as a historically underutilized business is not
209 affected because the client company has entered into an agreement
210 with a PEO or uses the services of a PEO.

211 **SECTION 5.** (1) Except as otherwise provided in this act, no
212 person shall provide, advertise, or otherwise hold itself out as
213 providing professional employer services in this state, unless
214 such person is registered under this act.

215 (2) Each applicant for registration under this act, shall
216 provide the Department of Insurance with the following
217 information:

218 (a) The name or names under which the PEO conducts
219 business;



220 (b) The address of the principal place of business of
221 the PEO and the address of each office it maintains in this state;

222 (c) The PEO's taxpayer or Employer Identification
223 Number;

224 (d) A list by jurisdiction of each name under which the
225 PEO has operated in the preceding five (5) years, including any
226 alternative names, names of predecessors and, if known, successor
227 business entities;

228 (e) A statement of ownership, which shall include the
229 name and evidence of the business experience of any person who,
230 individually or acting in concert with one or more other persons,
231 owns or controls, directly or indirectly, twenty-five percent
232 (25%) or more of the equity interests of the PEO;

233 (f) A statement of management, which shall include the
234 name and evidence of the business experience of any person who
235 serves as president, chief executive officer, or otherwise has the
236 authority to act as senior executive officer of the PEO; and

237 (g) A financial statement setting forth the financial
238 condition of the PEO or PEO group. At the time of application for
239 a new license, the applicant shall submit the most recent audit of
240 the applicant, which may not be older than thirteen (13) months.
241 Thereafter, a PEO or PEO group shall file on an annual basis,
242 within one hundred eighty (180) days after the end of the PEO's or
243 PEO group's fiscal year, a succeeding audit. An applicant may
244 apply for an extension with the Department of Insurance, but any



245 such request must be accompanied by a letter from the auditors
246 stating the reasons for the delay and the anticipated audit
247 completion date.

248 The financial statement shall be prepared in accordance with
249 generally accepted accounting principles (GAAP), and audited by an
250 independent certified public accountant licensed to practice in
251 the jurisdiction in which such accountant is located, and shall be
252 without qualification as to the going concern status of the PEO.
253 A PEO group may submit combined or consolidated audited financial
254 statements to meet the requirements of this section. A PEO that
255 has not had sufficient operating history to have audited
256 financials based upon at least twelve (12) months of operating
257 history must meet the financial capacity requirements below and
258 present financial statements reviewed by a certified public
259 accountant.

260 (3) (a) Each PEO operating within this state as of the
261 effective date of this act shall complete its initial registration
262 not later than one hundred eighty (180) days after the effective
263 date of this act. Such initial registration shall be valid until
264 one hundred eighty (180) days from the end of the PEO's first
265 fiscal year end that is more than one (1) year after the effective
266 date of this act.

267 (b) Each PEO not operating within this state as of the
268 effective date of this act shall complete its initial registration
269 prior to initiating operations within this state. If a PEO not



270 registered in this state becomes aware that an existing client not
271 based in this state has employees and operations in this state,
272 the PEO must either decline to provide PEO services for those
273 employees or notify the department within five (5) business days
274 of its knowledge of this fact and file a limited registration
275 application under subsection (6) of this section or a full
276 business registration if there are more than fifty (50) covered
277 employees. The department may issue an interim operating permit
278 for the period the registration applications are pending if (a)
279 the PEO is currently registered or licensed by another state and
280 (b) the department determines it to be in the best interests of
281 the potential covered employees.

282 (4) Within one hundred eighty (180) days after the end of a
283 registrant's fiscal year, such registrant shall renew its
284 registration by notifying the Department of Insurance of any
285 changes in the information provided in such registrant's most
286 recent registration or renewal. A registrant's existing
287 registration shall remain in effect during the pendency of a
288 renewal application.

289 (5) PEOs in a PEO group may satisfy the reporting and
290 financial requirements of this registration law on a combined or
291 consolidated basis provided that each member of the PEO group
292 guarantees the financial capacity obligations under this act of
293 each other member of the PEO group. In the case of a PEO group
294 that submits a combined or consolidated audited financial



295 statement, including entities that are not PEOs or that are not in
296 the PEO group, the controlling entity of the PEO group under the
297 consolidated or combined statement must guarantee the obligations
298 of the PEOs in the PEO group.

299 (6) (a) A PEO is eligible for a limited registration under
300 this act if such PEO:

301 (i) Submits a properly executed request for
302 limited registration on a form provided by the Department of
303 Insurance;

304 (ii) Is domiciled outside this state and is
305 licensed or registered as a professional employer organization in
306 another state;

307 (iii) Does not maintain an office in this state or
308 directly solicit clients located or domiciled within this state;
309 and

310 (iv) Does not have more than fifty (50) covered
311 employees employed or domiciled in this state on any given day.

312 (b) A limited registration is valid for one (1) year,
313 and may be renewed.

314 (c) A PEO seeking limited registration under this
315 section shall provide the Department of Insurance with information
316 and documentation necessary to show that the PEO qualifies for a
317 limited registration.

318 (d) Section 7 of this act shall not apply to applicants
319 for limited registration.



320 (7) The Department of Insurance shall maintain a list of
321 professional employer organizations registered under this act that
322 is readily available to the public by electronic or other means.

323 (8) The Department of Insurance may prescribe forms
324 necessary to promote the efficient administration of this section.

325 (9) The Department of Insurance shall, to the extent
326 practical, permit the acceptance of electronic filings in
327 conformance with Title 75, Chapter 12, Mississippi Code of 1972,
328 including applications, documents, reports and other filings
329 required by this act. The Department of Insurance may provide for
330 the acceptance of electronic filings and other assurance by an
331 independent and qualified assurance organization approved by the
332 commissioner that provides satisfactory assurance of compliance
333 acceptable to the department consistent with or in lieu of the
334 requirements of this section, Section 7 of this act, and other
335 requirements of this act or the rules promulgated pursuant
336 thereto. The commissioner shall permit a PEO to authorize such an
337 approved assurance organization to act on the PEO's behalf in
338 complying with the registration requirements of this act,
339 including electronic filings of information and payment of
340 registration fees. Use of such an approved assurance organization
341 shall be optional and not mandatory for a registrant. Nothing in
342 this subsection shall limit or change the department's authority
343 to register or terminate registration of a professional employer



344 organization or to investigate or enforce any provision of this
345 act.

346 (10) Subject to Section 25-16-9, records furnished to public
347 bodies by third parties which contain trade secrets or
348 confidential commercial or financial information shall not be
349 subject to inspection, examination, copying or reproduction under
350 this act until notice to third parties has been given, but the
351 records shall be released no later than twenty-one (21) days from
352 the date the third parties are given notice by the public body
353 unless the third parties have filed in chancery court a petition
354 seeking a protective order on or before the expiration of the
355 twenty-one-day time period. Any party seeking the protective
356 order shall give notice to the party requesting the information in
357 accordance with the Mississippi Rules of Civil Procedure.

358 **SECTION 6.** (1) Upon filing an initial registration
359 statement under this act, a PEO shall pay an initial registration
360 fee not to exceed Five Hundred Dollars (\$500.00).

361 (2) Upon each annual renewal of a registration statement
362 filed under this act, a PEO shall pay a renewal fee not to exceed
363 Two Hundred Fifty Dollars (\$250.00).

364 (3) The Department of Insurance shall determine by rule any
365 fee to be charged for a group registration.

366 (4) Each PEO seeking limited registration under the terms of
367 this subsection shall pay a fee in the amount not to exceed Two
368 Hundred Fifty Dollars (\$250.00) upon initial application for



369 limited registration and upon each annual renewal of such limited
370 registration.

371 (5) A PEO seeking registration pursuant to Section 5 of this
372 act shall pay an initial and annual fee not to exceed Two Hundred
373 Fifty Dollars (\$250.00).

374 **SECTION 7.** Except as provided by Section 5(6) and (9) of
375 this act, each PEO or collectively each PEO group shall maintain
376 either:

377 (a) A minimum of One Hundred Thousand Dollars
378 (\$100,000.00) in working capital as defined by Generally Accepted
379 Accounting Principles at registration as reflected in the
380 financial statements submitted to the Department of Insurance with
381 the initial registration and each annual renewal; or

382 (b) As an alternative, a PEO or PEO group may provide a
383 bond, irrevocable letter of credit, or securities with a minimum
384 market value equaling the deficiency plus One Hundred Thousand
385 Dollars (\$100,000.00) to the Department of Insurance. Such bond
386 to be held by a depository designated by the Department of
387 Insurance, securing payment by the PEO of all taxes, wages,
388 benefits or other entitlement due to or with respect to covered
389 employees, if the PEO does not make such payments when due.

390 **SECTION 8.** (1) Except as specifically provided in this act
391 or in the professional employer agreement, in each co-employment
392 relationship:



393 (a) The client shall be entitled to exercise all
394 rights, and shall be obligated to perform all duties and
395 responsibilities, otherwise applicable to an employer in an
396 employment relationship;

397 (b) The PEO shall be entitled to exercise only those
398 rights, and obligated to perform only those duties and
399 responsibilities, specifically required by this act or set forth
400 in the professional employer agreement. The rights, duties, and
401 obligations of the PEO as co-employer with respect to any covered
402 employee shall be limited to those arising pursuant to the
403 professional employer agreement and this act during the term of
404 co-employment by the PEO of such covered employee; and

405 (c) Unless otherwise expressly agreed by the PEO and
406 the client in a professional employer agreement, the client
407 retains the exclusive right to direct and control the covered
408 employees as is necessary to conduct the client's business, to
409 discharge any of client's fiduciary responsibilities, or to comply
410 with any licensure requirements applicable to client or to the
411 covered employees.

412 (2) Except as specifically provided in this act, the
413 co-employment relationship between the client and the PEO, and
414 between each co-employer and each covered employee, shall be
415 governed by the professional employer agreement. Each
416 professional employer agreement shall include the following:



417 (a) The allocation of rights, duties and obligations as
418 described in subsection (1) of this section;

419 (b) That the PEO shall have responsibility to pay wages
420 to covered employees; to withhold, collect, report and remit
421 payroll-related and unemployment taxes; and, to the extent the PEO
422 has assumed responsibility in the professional employer agreement,
423 to make payments for employee benefits for covered employees. As
424 used in this section, the term "wages" does not include any
425 obligation between a client and a covered employee for payments
426 beyond or in addition to the covered employee's salary, draw or
427 regular rate of pay, such as bonuses, commissions, severance pay,
428 deferred compensation, profit-sharing or vacation, sick or other
429 paid time-off pay, unless the PEO has expressly agreed to assume
430 liability for such payments in the professional employer
431 agreement;

432 (c) That the PEO shall have a right to hire,
433 discipline, and terminate a covered employee, as may be necessary
434 to fulfill the PEO's responsibilities under this act and the
435 professional employer agreement. The client shall have a right to
436 hire, discipline, and terminate a covered employee.

437 (3) With respect to each professional employer agreement
438 entered into by a PEO, such PEO shall provide written notice to
439 each covered employee affected by such agreement of the general
440 nature of the co-employment relationship between and among the
441 PEO, the client, and such covered employee.



442 (4) Except to the extent otherwise expressly provided by the
443 applicable professional employer agreement:

444 (a) A client shall be solely responsible for the
445 quality, adequacy or safety of the goods or services produced or
446 sold in client's business;

447 (b) A client shall be solely responsible for directing,
448 supervising, training, and controlling the work of the covered
449 employees with respect to the business activities of the client
450 and solely responsible for the acts, errors or omissions of the
451 covered employees with regard to such activities;

452 (c) A client shall not be liable for the acts, errors
453 or omissions of a PEO, or of any covered employee of the client
454 and a PEO when such covered employee is acting under the express
455 direction and control of the PEO;

456 (d) A PEO shall not be liable for the acts, errors, or
457 omissions of a client or of any covered employee of the client
458 when such covered employee is acting under the express direction
459 and control of the client;

460 (e) Nothing in this subsection shall serve to limit any
461 contractual liability or obligation specifically provided in the
462 written professional employer agreement; and

463 (f) A covered employee is not, solely as the result of
464 being a covered employee of a PEO, an employee of the PEO for
465 purposes of general liability insurance, fidelity bonds, surety
466 bonds, employer's liability which is not covered by workers'



467 compensation, or liquor liability insurance carried by the PEO
468 unless the covered employees are included by specific reference in
469 the professional employer agreement and applicable prearranged
470 employment contract, insurance contract or bond.

471 (5) A PEO under this act is not engaged in the sale of
472 insurance or in acting as a third-party administrator (TPA) by
473 offering, marketing, selling, administering, or providing
474 professional employer services which include services and employee
475 benefit plans for covered employees.

476 (6) For purposes of this state or any county, municipality
477 or other political subdivision thereof:

478 (a) Covered employees whose services are subject to
479 sales tax shall be deemed the employees of the client for purposes
480 of collecting and levying sales tax on the services performed by
481 the covered employee. Nothing contained in this act shall relieve
482 a client of any sales tax liability with respect to its goods or
483 services;

484 (b) Any tax or assessment imposed upon professional
485 employer services or any business license or other fee which is
486 based upon "gross receipts" shall allow a deduction from the gross
487 income or receipts of the business derived from performing
488 professional employer services that is equal to that portion of
489 the fee charged to a client that represents the actual cost of
490 wages and salaries, benefits, workers' compensation, payroll
491 taxes, withholding, or other assessments paid to or on behalf of a



492 covered employee by the professional employer organization under a
493 professional employer agreement;

494 (c) Any tax assessed or assessment or mandated
495 expenditure on a per-capita or per-employee basis shall be
496 assessed against the client for covered employees and against the
497 professional employer organization for its employees who are not
498 covered employees co-employed with a client. Benefits or monetary
499 consideration that meet the requirements of mandates imposed on a
500 client and that are received by covered employees through the PEO
501 either through payroll or through benefit plans sponsored by the
502 PEO shall be credited against the client's obligation to fulfill
503 such mandates; and

504 (d) In the case of a tax or an assessment imposed or
505 calculated upon the basis of total payroll, the professional
506 employer organization shall be eligible to apply any small
507 business allowance or exemption available to the client for the
508 covered employees for purpose of computing the tax.

509 **SECTION 9.** (1) If the commissioner has a reasonable basis
510 to conclude that the PEO or PEO group is not in compliance with
511 the requirements of this act, the commissioner may, upon
512 reasonable notice, conduct an examination of records. The
513 expenses of the examination shall be borne and paid by the PEO or
514 PEO group that is under examination.

515 (2) Documents, materials or other information, including,
516 but not limited to, all working papers, and copies thereof,



517 created, produced or obtained by or disclosed to the commissioner
518 or any other person in the course of an audit or review made under
519 this act shall be confidential by law and privileged, and shall
520 not be subject to the Mississippi Public Records Act. The
521 commissioner is authorized to use the documents, materials or
522 other information in the furtherance of any regulatory or legal
523 action brought as part of the commissioner's official duties.

524 (3) In response to a specific complaint against any PEO or
525 PEO group, the commissioner is authorized to inspect records held
526 by the PEO or PEO group that are necessary to investigate and
527 resolve the complaint.

528 **SECTION 10.** (1) A fully-insured health plan in which
529 covered employees of a PEO participate shall be treated for
530 purposes of state law as a single employer welfare benefit plan.

531 (2) For purposes of sponsoring retirement and welfare
532 benefit plans for its covered employees:

533 (a) A registered PEO shall be considered for state law
534 purposes as the employer of one or more covered employees
535 participating in such fully insured health plans sponsored by a
536 PEO; and

537 (b) A client shall be considered for state law purposes
538 as the employer of its covered employees for purposes of a
539 retirement or welfare benefit plan sponsored by the client.

540 **SECTION 11.** (1) A person may not knowingly:



541 (a) Offer or provide professional employer services or
542 use the names PEO, professional employer organization, staff
543 leasing, employee leasing, administrative employer or other title
544 representing professional employer services without first becoming
545 registered under this act.

546 (b) Provide false or fraudulent information to the
547 Department of Insurance in conjunction with any registration,
548 renewal, or in any report required under this act.

549 (2) A registrant may be subject to disciplinary action taken
550 by the Department of Insurance for violation of subsection (1)(a)
551 or (b) of this section or for:

552 (a) The conviction of a professional employer
553 organization or a controlling person of a PEO of a crime that
554 relates to the operation of a PEO or the ability of the licensee
555 or a controlling person of a licensee to operate a PEO;

556 (b) Knowingly making a material misrepresentation to
557 the department, or other governmental agency;

558 (c) A willful violation of this act or any order or
559 regulation issued by the department;

560 (d) At any time fails to meet any qualification for
561 which issuance of the registration could have been refused;

562 (e) Has been convicted of, or has entered a plea of
563 guilty or no contest to, a felony without regard to whether the
564 adjudication was withheld; or

565 (f) Is under suspension or revocation in another state.



566 (3) Upon finding, after notice and opportunity for hearing,
567 that a PEO, or a controlling person of a PEO, or a person offering
568 PEO services has violated one or more provisions of this section
569 and subject to any appeal, the commissioner may:

570 (a) Deny an application for a license;

571 (b) Revoke, restrict or refuse to renew a license;

572 (c) Impose an administrative penalty in an amount not
573 to exceed One Thousand Dollars (\$1,000.00) for each material
574 violation;

575 (d) Place the licensee on probation for the period
576 subject to conditions that the department specifies; or

577 (e) Issue a cease and desist.

578 **SECTION 12.** This act shall take effect and be in force from
579 and after July 1, 2022.

