

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 237,
2 Page 1, Section A, Line 2, by inserting the following after all of said section and line:

3
4 "285.700. 1. Sections 285.700 to 285.750 shall be known and may be cited as the
5 "Professional Employer Organization Act".

6 2. The secretary of state or any person designated by the secretary of state may enforce the
7 provisions of sections 285.700 to 285.750.

8 285.705. As used in sections 285.700 to 285.750, the following terms mean:

9 (1) "Client", any person who enters into a professional employer agreement with a PEO;

10 (2) "Coemployer", either a PEO or a client;

11 (3) "Coemployment relationship", a relationship that is intended to be an ongoing
12 relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and
13 obligations of an employer that arise out of an employment relationship have been allocated
14 between coemployers pursuant to a professional employer agreement and sections 285.700 to
15 285.750. In such a coemployment relationship:

16 (a) The PEO is entitled to enforce only such employer rights and is subject to only those
17 obligations specifically allocated to the PEO by the professional employer agreement or sections
18 285.700 to 285.750;

19 (b) The client is entitled to enforce those rights and obligated to provide and perform those
20 employer obligations allocated to such client by the professional employer agreement and sections
21 285.700 to 285.750; and

22 (c) The client is entitled to enforce any right and obligated to perform any obligation of an
23 employer not specifically allocated to the PEO by the professional employer agreement or sections
24 285.700 to 285.750;

25 (4) "Covered employee", an individual having a coemployment relationship with a PEO and
26 a client who meets the following criteria:

27 (a) The individual has received written notice of coemployment with the PEO; and

28 (b) The individual's coemployment relationship is pursuant to a professional employer
29 agreement subject to sections 285.700 to 285.750.

30 Individuals who are officers, directors, shareholders, partners, and managers of the client will be
31 covered employees, except to the extent the PEO and the client have expressly agreed in the

Action Taken _____ Date _____

1 professional employer agreement that such individuals would not be covered employees, provided
2 such individuals meet the criteria of this subdivision and act as operational managers or perform
3 day-to-day operational services for the client;

4 (5) "PEO group", any two or more PEOs that are majority owned or commonly controlled
5 by the same entity, parent, or controlling person;

6 (6) "Person", any individual, partnership, corporation, limited liability company,
7 association, or any other form of legally recognized entity;

8 (7) "Professional employer agreement", a written contract by and between a client and a
9 PEO that provides:

10 (a) For the coemployment of covered employees;

11 (b) For the allocation of employer rights and obligations between the client and the PEO
12 with respect to the covered employees; and

13 (c) That the PEO and the client assume the responsibilities required under sections 285.700
14 to 285.750;

15 (8) "Professional employer organization" or "PEO", any person engaged in the business of
16 providing professional employer services. A person engaged in the business of providing
17 professional employer services shall be subject to registration and regulation under sections 285.700
18 to 285.750 regardless of its use of the term or conducting business as a professional employer
19 organization, PEO, staff leasing company, registered staff leasing company, employee leasing
20 company, administrative employer, or any other name. The following shall not be deemed to be
21 professional employer organizations or the providing of professional employment services for the
22 purposes of sections 285.700 to 285.750:

23 (a) Arrangements wherein a person, whose principal business activity is not entering into
24 professional employer arrangements and does not hold itself out as a PEO, shares employees with a
25 commonly owned company within the meaning of Section 414(b) and (c) of the Internal Revenue
26 Code of 1986, as amended;

27 (b) Independent contractor arrangements by which a person assumes responsibility for the
28 product produced or service performed by such person or his or her agents and retains and exercises
29 primary direction and control over the work performed by the individuals whose services are
30 supplied under such arrangements; and

31 (c) Providing temporary help services;

32 (9) "Professional employer services", the service of entering into coemployment
33 relationships under sections 285.700 to 285.750 in which all or a majority of the employees
34 providing services to a client or to a division or work unit of a client are covered employees;

35 (10) "Registrant", a PEO registered under sections 285.700 to 285.750;

36 (11) "Temporary help services", services consisting of a person:

37 (a) Recruiting and hiring its own employees;

38 (b) Finding other organizations that need the services of those employees;

39 (c) Assigning those employees to perform work at or services for the other organizations to
40 support or supplement the other organizations' workforces, or to provide assistance in special work
41 situations including, but not limited to, employee absences, skill shortages, seasonal workloads, or

1 to perform special assignments or projects; and

2 (d) Customarily attempting to reassign the employees to other organizations when they
3 finish each assignment.

4 285.710. 1. Nothing contained in sections 285.700 to 285.750 or in any professional
5 employer agreement shall affect, modify, or amend any collective bargaining agreement or the
6 rights or obligations of any client, PEO, or covered employee under the federal National Labor
7 Relations Act, the federal Railway Labor Act, or sections 105.500 to 105.530.

8 2. Nothing in sections 285.700 to 285.750 or in any professional employer agreement shall:

9 (1) Diminish, abolish, or remove rights of covered employees to a client or obligations of
10 such client to a covered employee existing prior to the effective date of the professional employer
11 agreement;

12 (2) Affect, modify, or amend any contractual relationship or restrictive covenant between a
13 covered employee and any client in effect at the time a professional employer agreement becomes
14 effective. A professional employer agreement shall also not prohibit or amend any contractual
15 relationship or restrictive covenant that is entered into subsequently between a client or a covered
16 employee. A PEO shall have no responsibility or liability in connection with, or arising out of, any
17 such existing or new contractual relationship or restrictive covenant unless the PEO has specifically
18 agreed otherwise in writing; or

19 (3) Create any new or additional enforceable right of a covered employee against a PEO
20 that is not specifically provided by the professional employer agreement or sections 285.700 to
21 285.750.

22 3. Nothing contained in sections 285.700 to 285.750 or any professional employer
23 agreement shall affect, modify, or amend any state, local, or federal licensing, registration, or
24 certification requirement applicable to any client or covered employee.

25 4. A covered employee who shall be licensed, registered, or certified according to law or
26 regulation is deemed solely an employee of the client for purposes of any such license, registration,
27 or certification requirement.

28 5. A PEO shall not be deemed to engage in any occupation, trade, profession, or other
29 activity that is subject to licensing, registration, or certification requirements, or is otherwise
30 regulated by a governmental entity solely by entering into and maintaining a coemployment
31 relationship with a covered employee who is subject to such requirements or regulation.

32 6. A client shall have the sole right of direction and control of the professional or licensed
33 activities of covered employees and of the client's business. Such covered employees and clients
34 shall remain subject to regulation by the regulatory or governmental entity responsible for licensing,
35 registration, or certification of such covered employees or clients.

36 7. For purposes of determination of tax credits, economic incentives, or other benefits
37 provided by this state or other government entity and based on employment, covered employees
38 shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax
39 credit, economic incentive, or other benefit arising as the result of the employment of covered
40 employees of such client. Notwithstanding that the PEO is the W-2 reporting employer, the client
41 shall continue to qualify for such benefit, incentive, or credit. If the grant or amount of any such

benefit, incentive, or credit is based on the number of employees, then each client shall be treated as employing only those covered employees coemployed by the client. Covered employees working for other clients of the PEO shall not be counted. Each PEO shall provide, upon request by a client or an agency or department of this state, employment information reasonably required by any agency or department of this state responsible for administration of any such tax credit, economic incentive, or other benefit that is necessary to support any request, claim, application, or other action by a client seeking any such tax credit, economic incentive, or other benefit.

8. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client company's status or certification as a minority business enterprise or a women's business enterprise, as those terms are defined in section 37.020, shall not be affected because the client company has entered into an agreement with a PEO or uses the services of a PEO.

285.715. 1. Except as otherwise provided in sections 285.700 to 285.750, no person shall provide, advertise, or otherwise hold itself out as providing professional employer services in this state, unless such person is registered under sections 285.700 to 285.750.

2. Each applicant for registration under sections 285.700 to 285.750 shall provide the secretary of state with the following information:

(1) The name or names under which the PEO conducts business;

(2) The address of the principal place of business of the PEO and the address of each office it maintains in the state;

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

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

(5) A statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent or more of the equity interests of the PEO;

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

(7) A financial statement setting forth the financial condition of the PEO or PEO group. At the time of application for a new license, the applicant shall submit the most recent audit of the applicant, which shall not be older than thirteen months. Thereafter, a PEO or PEO group shall file on an annual basis, within one hundred eighty days after the end of the PEO's or PEO group's fiscal year, a succeeding audit. An applicant may apply for an extension with the secretary of state, but any such request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated audit completion date. The financial statement shall be prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the PEO. A PEO or PEO group may submit

1 combined or consolidated audited financial statements to meet the requirements of this section. A
2 PEO that has not had sufficient operating history to have audited financials based upon at least
3 twelve months of operating history shall meet the financial capacity requirements of sections
4 285.700 to 285.750 and present financial statements reviewed by a certified public accountant.

5 3. (1) Each PEO operating within this state as of the effective date of sections 285.700 to
6 285.750 shall complete its initial registration not later than one hundred eighty days after the
7 effective date of sections 285.700 to 285.750. Such initial registration shall be valid until one
8 hundred eighty days from the end of the PEO's first fiscal year that is more than one year after the
9 effective date of sections 285.700 to 285.750.

10 (2) Each PEO not operating within this state as of the effective date of sections 285.700 to
11 285.750 shall complete its initial registration prior to initiating operations within this state. In the
12 event a PEO not registered in this state becomes aware that an existing client not based in this state
13 has employees and operations in this state, the PEO shall either decline to provide PEO services for
14 those employees or notify the secretary of state within five business days of its knowledge of this
15 fact and file a limited registration application under subsection 6 of this section or a full business
16 registration if there are more than fifty covered employees. The secretary of state may issue an
17 interim operating permit for the period the registration applications are pending if the PEO is
18 currently registered or licensed by another state and the secretary of state determines it to be in the
19 best interest of the potential covered employees.

20 4. Within one hundred eighty days after the end of a registration's fiscal year, such registrant
21 shall renew its registration by notifying the secretary of state of any changes in the information
22 provided in such registrant's most recent registration or renewal. A registrant's existing registration
23 shall remain in effect during the pendency of a renewal application.

24 5. PEOs in a PEO group may satisfy the reporting and financial requirements of sections
25 285.700 to 285.750 on a combined or consolidated basis, provided that each member of the PEO
26 group guarantees the financial capacity obligations under sections 285.700 to 285.750 of each other
27 member of the PEO group. In the case of a PEO or PEO group that submits a combined or
28 consolidated audited financial statement including entities that are not PEOs or that are not in the
29 PEO group, the controlling entity of the PEO group under the consolidated or combined statement
30 shall guarantee the obligations of the PEOs in the PEO group.

31 6. (1) A PEO is eligible for a limited registration under sections 285.700 to 285.750 if such
32 PEO:

33 (a) Submits a properly executed request for limited registration on a form provided by the
34 secretary of state;

35 (b) Is domiciled outside this state and is licensed or registered as a professional employer
36 organization in another state;

37 (c) Does not maintain an office in this state or directly solicit clients located or domiciled
38 within this state; and

39 (d) Does not have more than fifty covered employees employed or domiciled in this state on
40 any given day.

41 (2) A limited registration is valid for one year, and may be renewed.

1 (3) A PEO seeking limited registration under this section shall provide the secretary of state
2 with information and documentation necessary to show that the PEO qualifies for a limited
3 registration.

4 (4) The provisions of section 285.725 shall not apply to applicants for limited registration.

5 7. The secretary of state shall maintain a list of professional employer organizations
6 registered under sections 285.700 to 285.750 that is readily available to the public by electronic or
7 other means.

8 8. The secretary of state may produce forms necessary to promote the efficient
9 administration of this section.

10 9. The secretary of state shall, to the extent practical, permit the acceptance of electronic
11 filings in conformance with sections 432.200 to 432.295, including applications, documents,
12 reports, and other filings required by sections 285.700 to 285.750. The secretary of state may
13 provide for the acceptance of electronic filings and other assurance by an independent and qualified
14 assurance organization approved by the secretary of state that provides satisfactory assurance of
15 compliance acceptable to the secretary of state consistent with or in lieu of the requirements of
16 sections 285.715 and 285.725 and other requirements of sections 285.700 to 285.750. The secretary
17 of state shall permit a PEO to authorize such an approved assurance organization to act on the PEO's
18 behalf in complying with the registration requirements of sections 285.700 to 285.750, including
19 electronic filings of information and payment of registration fees. Use of such an approved
20 assurance organization shall be optional and not mandatory for a registrant. Nothing in this
21 subsection shall limit or change the secretary's authority to register or terminate registration of a
22 professional employer organization or to investigate or enforce any provision of sections 285.700 to
23 285.750.

24 10. All records, reports, and other information obtained from a PEO under sections 285.700
25 to 285.750, except to the extent necessary for the proper administration of sections 285.700 to
26 285.750 by the secretary of state, shall be confidential and shall not be considered a "public record"
27 as that term is defined in section 610.010.

28 285.720. 1. Upon filing an initial registration statement under sections 285.700 to 285.750,
29 a PEO shall pay an initial registration fee not to exceed five hundred dollars.

30 2. Upon each annual renewal of a registration statement filed under sections 285.700 to
31 285.750, a PEO shall pay a renewal fee not to exceed two hundred fifty dollars.

32 3. The secretary of state shall determine any fee to be charged for a group registration.

33 4. Each PEO seeking limited registration shall pay a fee in the amount not to exceed two
34 hundred fifty dollars upon initial application for limited registration and upon each renewal of such
35 limited registration.

36 5. A PEO seeking registration under section 285.715 shall pay an initial and annual fee not
37 to exceed two hundred fifty dollars.

38 6. No fee charged under sections 285.700 to 285.750 shall exceed the amount reasonably
39 necessary for the administration of sections 285.700 to 285.750.

40 285.725. Except as provided by 285.715, each PEO or collectively each PEO group shall
41 maintain either:

1 (1) Positive working capital as defined by generally accepted accounting principles at
2 registration as reflected in the financial statements submitted to the secretary of state with the initial
3 registration and each annual renewal; or

4 (2) A PEO or PEO group that does not have positive working capital may provide a bond,
5 irrevocable letter of credit, or securities with a minimum market value equaling the deficiency plus
6 one hundred thousand dollars to the secretary of state.

7 Such bond is to be held by a depository designated by the secretary securing payment by the PEO of
8 all taxes, wages, benefits, or other entitlement due to or with respect to covered employees if the
9 PEO does not make such payments when due.

10 285.730. 1. Except as specifically provided in sections 285.700 to 285.750 or in the
11 professional employer agreement, in each coemployment relationship:

12 (1) The client shall be entitled to exercise all rights, and shall be obligated to perform all
13 duties and responsibilities otherwise applicable to an employer in an employment relationship;

14 (2) The PEO shall be entitled to exercise only those rights and obligated to perform only
15 those duties and responsibilities specifically required under sections 285.700 to 285.750 or set forth
16 in the professional employer agreement. The rights, duties, and obligations of the PEO as
17 coemployer with respect to any covered employee shall be limited to those arising pursuant to the
18 professional employer agreement and sections 285.700 to 285.750 during the term of coemployment
19 by the PEO of such covered employee; and

20 (3) Unless otherwise expressly agreed by the PEO and the client in a professional employer
21 agreement, the client retains the exclusive right to direct and control the covered employees as is
22 necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities,
23 or to comply with any licensure requirements applicable to the client or to the covered employees.

24 2. Except as specifically provided under sections 285.700 to 285.750, the coemployment
25 relationship between the client and the PEO and between each coemployer and each covered
26 employee shall be governed by the professional employer agreement. Each professional employer
27 agreement shall include the following:

28 (1) The allocation of rights, duties, and obligations as described in subsection 1 of this
29 section;

30 (2) A requirement that the PEO shall have responsibility to:

31 (a) Pay wages to covered employees;

32 (b) Withhold, collect, report, and remit payroll-related and unemployment taxes; and

33 (c) To the extent the PEO has assumed responsibility in the professional employer
34 agreement, to make payments for employee benefits for covered employees.

35
36 As used in this section, the term "wages" does not include any obligation between a client and a
37 covered employee for payments beyond or in addition to the covered employee's salary, draw, or
38 regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit
39 sharing, vacation, sick, or other paid-time off pay, unless the PEO has expressly agreed to assume
40 liability for such payments in the professional employer agreement; and

41 (3) A requirement that the PEO shall have a right to hire, discipline, and terminate a

1 covered employee as may be necessary to fulfill the PEO's responsibilities under sections 285.700 to
2 285.750 and the professional employer agreement. The client shall have a right to hire, discipline,
3 and terminate a covered employee.

4 3. With respect to each professional employer agreement entered into by a PEO, such PEO
5 shall provide written notice to each covered employee affected by such agreement of the general
6 nature of the coemployment relationship between and among the PEO, the client, and such covered
7 employee.

8 4. Except to the extent otherwise expressly provided by the applicable professional
9 employer agreement:

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

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

15 (3) A client shall not be liable for the acts, errors, or omissions of a PEO or of any covered
16 employee of the client and a PEO if such covered employee is acting under the express direction
17 and control of the PEO;

18 (4) A PEO shall not be liable for the acts, errors, or omissions of a client or of any covered
19 employee of the client if such covered employee is acting under the express direction and control of
20 the client;

21 (5) Nothing in this subsection shall serve to limit any contractual liability or obligation
22 specifically provided in the written professional employer agreement; and

23 (6) A covered employee is not, solely as the result of being a covered employee of a PEO,
24 an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds,
25 employer's liability that is not covered by workers' compensation, or liquor liability insurance
26 carried by the PEO unless the covered employees are included by specific reference in the
27 professional employer agreement and applicable prearranged employment contract, insurance
28 contract, or bond.

29 5. A PEO under sections 285.700 to 285.750 is not engaged in the sale of insurance or in
30 acting as a third party administrator by offering, marketing, selling, administering, or providing
31 professional employer services that include services and employee benefit plans for covered
32 employees.

33 6. For purposes of this state or any county, municipality, or other political subdivision
34 thereof:

35 (1) Any tax or assessment imposed upon professional employer services or any business
36 license or other fee that is based upon "gross receipts" shall allow a deduction from the gross
37 income or receipts of the business derived from performing professional employer services that is
38 equal to that portion of the fee charged to a client that represents the actual cost of wages and
39 salaries, benefits, payroll taxes, withholding, or other assessments paid to or on behalf of a covered
40 employee by the professional employer organization under a professional employer agreement;

41 (2) Any tax assessed or assessment or mandated expenditure on a per capita or per

employee basis shall be assessed against the client for covered employees and against the professional employer organization for its employees who are not covered employees coemployed with a client. Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the PEO either through payroll or through benefit plans sponsored by the PEO shall be credited against the client's obligation to fulfill such mandates; and

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

285.750. 1. A person shall not knowingly:

(1) Offer or provide professional employer services or use the names PEO, professional employer organization, staff leasing, employee leasing, administrative employer, or other title representing professional employer services without first becoming registered under sections 285.700 to 285.750; or

(2) Provide false or fraudulent information to the secretary of state in conjunction with any registration, renewal, or in any report required under sections 285.700 to 285.750.

2. Disciplinary action may be taken by the secretary of state for violation of this section for:

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

(2) Knowingly making a material misrepresentation to the secretary of state or other governmental agency; or

(3) A willful violation of sections 285.700 to 285.750 or any order issued by the secretary of state under sections 285.700 to 285.750.

3. Upon finding, after notice and opportunity for hearing, that a PEO, a controlling person of a PEO, or a person offering PEO services has violated one or more provisions of this section and subject to appeal, the secretary of state may:

(1) Deny an application for a license;

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

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

(4) Place the licensee on probation for the period and subject to conditions that the secretary of state specifies; or

(5) Issue a cease and desist order.

288.032. 1. After December 31, 1977, "employer" means:

(1) Any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more except that for the purposes of this definition, wages paid for "agricultural labor" as defined in paragraph (a) of subdivision (1) of subsection 12 of section 288.034 and for "domestic services" as defined in subdivisions (2) and (13) of subsection 12 of section 288.034 shall not be considered;

1 (2) Any employing unit which for some portion of a day in each of twenty different
2 calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding
3 calendar year, had in employment at least one individual (irrespective of whether the same
4 individual was in employment in each such day); except that for the purposes of this definition,
5 services performed in "agricultural labor" as defined in paragraph (a) of subdivision (1) of
6 subsection 12 of section 288.034 and in "domestic services" as defined in subdivisions (2) and (13)
7 of subsection 12 of section 288.034 shall not be considered;

8 (3) Any governmental entity for which service in employment as defined in subsection 7 of
9 section 288.034 is performed;

10 (4) Any employing unit for which service in employment as defined in subsection 8 of
11 section 288.034 is performed during the current or preceding calendar year;

12 (5) Any employing unit for which service in employment as defined in paragraph (b) of
13 subdivision (1) of subsection 12 of section 288.034 is performed during the current or preceding
14 calendar year;

15 (6) Any employing unit for which service in employment as defined in subsection 13 of
16 section 288.034 is performed during the current or preceding calendar year;

17 (7) Any individual, type of organization or employing unit which has been determined to be
18 a successor pursuant to section 288.110;

19 (8) Any individual, type of organization or employing unit which has elected to become
20 subject to this law pursuant to subdivision (1) of subsection 3 of section 288.080;

21 (9) Any individual, type of organization or employing unit which, having become an
22 employer, has not pursuant to section 288.080 ceased to be an employer;

23 (10) Any employing unit subject to the Federal Unemployment Tax Act or which, as a
24 condition for approval of this law for full tax credit against the tax imposed by the Federal
25 Unemployment Tax Act, is required, pursuant to such act, to be an employer pursuant to this law.

26 2. (1) Notwithstanding any other provisions of this law, any employer, individual,
27 organization, partnership, corporation, other legal entity or employing unit that meets the definition
28 of lessor employing unit, as defined in subdivision (5) of this subsection, shall be liable for
29 contributions on wages paid by the lessor employing unit to individuals performing services for
30 client lessees of the lessor employing unit. Unless the lessor employing unit has timely complied
31 with the provisions of subdivision (3) of this subsection, any employer, individual, organization,
32 partnership, corporation, other legal entity or employing unit which is leasing individuals from any
33 lessor employing unit shall be jointly and severally liable for any unpaid contributions, interest and
34 penalties due pursuant to this law from any lessor employing unit attributable to wages for services
35 performed for the client lessee entity by individuals leased to the client lessee entity, and the lessor
36 employing unit shall keep separate records and submit separate quarterly contribution and wage
37 reports for each of its client lessee entities. Delinquent contributions, interest and penalties shall be
38 collected in accordance with the provisions of this chapter.

39 (2) Notwithstanding the provisions of subdivision (1) of this subsection, any governmental
40 entity or nonprofit organization that meets the definition of lessor employing unit, as defined in
41 subdivision (5) of this subsection, and has elected to become liable for payments in lieu of

1 contributions as provided in subsection 3 of section 288.090, shall pay the division payments in lieu
2 of contributions, interest, penalties and surcharges in accordance with section 288.090 on benefits
3 paid to individuals performing services for the client lessees of the lessor employing unit. If the
4 lessor employing unit has not timely complied with the provisions of subdivision (3) of this
5 subsection, any client lessees with services attributable to and performed for the client lessees shall
6 be jointly and severally liable for any unpaid payments in lieu of contributions, interest, penalties
7 and surcharges due pursuant to this law. The lessor employing unit shall keep separate records and
8 submit separate quarterly contribution and wage reports for each of its client lessees. Delinquent
9 payments in lieu of contributions, interest, penalties and surcharges shall be collected in accordance
10 with subsection 3 of section 288.090. The election to be liable for payments in lieu of contributions
11 made by a governmental entity or nonprofit organization meeting the definition of lessor employing
12 unit may be terminated by the division in accordance with subsection 3 of section 288.090.

13 (3) In order to relieve a client lessees from joint and several liability and the separate
14 reporting requirements imposed pursuant to this subsection, any lessor employing unit may post and
15 maintain a surety bond issued by a corporate surety authorized to do business in Missouri in an
16 amount equivalent to the contributions or payments in lieu of contributions for which the lessor
17 employing unit was liable in the last calendar year in which he or she accrued contributions or
18 payments in lieu of contributions, or one hundred thousand dollars, whichever amount is the greater,
19 to ensure prompt payment of contributions or payments in lieu of contributions, interest, penalties
20 and surcharges for which the lessor employing unit may be, or becomes, liable pursuant to this law.
21 In lieu of a surety bond, the lessor employing unit may deposit in a depository designated by the
22 director, securities with marketable value equivalent to the amount required for a surety bond. The
23 securities so deposited shall include authorization to the director to sell any securities in an amount
24 sufficient to pay any contributions or payments in lieu of contributions, interest, penalties and
25 surcharges which the lessor employing unit fails to promptly pay when due. In lieu of a surety bond
26 or securities as described in this subdivision, any lessor employing unit may provide the director
27 with an irrevocable letter of credit, as defined in section 409.5-103, issued by any state or federally
28 chartered financial institution, in an amount equivalent to the amount required for a surety bond as
29 described in this subdivision. In lieu of a surety bond, securities or an irrevocable letter of credit, a
30 lessor employing unit may obtain a certificate of deposit issued by any state or federally chartered
31 financial institution, in an amount equivalent to the amount required for a surety bond as described
32 in this subdivision. The certificate of deposit shall be pledged to the director until release by the
33 director. As used in this subdivision, the term "certificate of deposit" means a certificate
34 representing any deposit of funds in a state or federally chartered financial institution for a specified
35 period of time which earns interest at a fixed or variable rate, where such funds cannot be
36 withdrawn prior to a specified time without forfeiture of some or all of the earned interest.

37 (4) Any lessor employing unit which is currently engaged in the business of leasing
38 individuals to client lessees shall comply with the provisions of subdivision (3) of this subsection by
39 September 28, 1992. Lessor employing units not currently engaged in the business of leasing
40 individuals to client lessees shall comply with subdivision (3) of this subsection before entering into
41 a written lease agreement with client lessees.

1 (5) As used in this subsection, the term "lessor employing unit" means ~~[an independently~~
2 ~~established business entity,]~~ a registered professional employer organization as defined under
3 subdivision (10) of section 285.705 or a governmental entity as defined in subsection 1 of section
4 288.030 or nonprofit organization as defined in subsection 3 of section 288.090 which, pursuant to a
5 written lease agreement between the lessor employing unit and the client lessees, engages in the
6 business of providing individuals to any other employer, individual, organization, partnership,
7 corporation, other legal entity or employing unit referred to in this subsection as a client lessee.

8 (6) The provisions of this subsection shall not be applicable to private employment agencies
9 who provide their employees to employers on a temporary help basis provided the private
10 employment agencies are liable as employers for the payment of contributions on wages paid to
11 temporary workers so employed.

12 3. After September 30, 1986, notwithstanding any provision of section 288.034, for the
13 purpose of this law, in no event shall a for-hire motor carrier as regulated by the Missouri division
14 of motor carrier and railroad safety or whose operations are confined to a commercial zone be
15 determined to be the employer of a lessor as defined in 49 CFR Section 376.2(f), or of a driver
16 receiving remuneration from a lessor as defined in 49 CFR Section 376.2(f), provided, however, the
17 term "for-hire motor carrier" shall in no event include an organization described in Section
18 501(c)(3) of the Internal Revenue Code or any governmental entity.

19 4. The owner or operator of a beauty salon or similar establishment shall not be determined
20 to be the employer of a person who utilizes the facilities of the owner or operator but who receives
21 neither salary, wages or other compensation from the owner or operator and who pays the owner or
22 operator rent or other payments for the use of the facilities.

23 5. For purposes of this chapter, a taxicab driver shall not be considered to be an employee of
24 the company that leases the taxicab to the driver or that provides dispatching or similar rider referral
25 services unless the driver is shown to be an employee of that company by application of the Internal
26 Revenue Service twenty-factor right-to-control test."; and

27
28 Further amend said bill by amending the title, enacting clause, and intersectional references
29 accordingly.