

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

**Offered By**

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for  
2 Senate Bill No. 783, Page 1, Section 1.016, Line 6, by inserting after all of said section and line the  
3 following:  
4

5 "285.730. 1. Except as specifically provided in sections 285.700 to 285.750 or in the  
6 professional employer agreement, in each coemployment relationship:

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

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

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

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

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

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

26 (a) Pay wages to covered employees;

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

28 (c) To the extent the PEO has assumed responsibility in the professional employer  
29 agreement, to make payments for employee benefits for covered employees.  
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Action Taken \_\_\_\_\_ Date \_\_\_\_\_

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

6 (3) A requirement that the PEO shall have a right to hire, discipline, and terminate a covered  
7 employee as may be necessary to fulfill the PEO's responsibilities under sections 285.700 to  
8 285.750 and the professional employer agreement. The client shall have a right to hire, discipline,  
9 and terminate a covered employee.

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

14 4. Except to the extent otherwise expressly provided by the applicable professional  
15 employer agreement:

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

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

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

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

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

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

35 5. A PEO under sections 285.700 to 285.750 is not engaged in the sale of insurance or in  
36 acting as a third-party administrator by offering, marketing, selling, administering, or providing  
37 professional employer services that include services and employee benefit plans for covered  
38 employees. A client and a registered professional employer organization shall each be deemed an  
39 employer under the laws of this state for purposes of sponsoring retirement and welfare benefits

1 plans for its covered employees. A fully insured welfare benefit plan sponsored by a registered  
2 professional employer organization for the benefit of its covered employees shall be treated for the  
3 purposes of state law as a single employer welfare benefit plan. For purposes of sponsoring welfare  
4 benefit plans for its eligible covered employees, a registered professional employer organization  
5 shall be considered the employer of all of its eligible covered employees, and all eligible covered  
6 employees of one or more clients participating in a health benefit plan sponsored by a registered  
7 professional employer organization shall be considered employees of such registered professional  
8 employer organization. The provisions of this section shall not supersede or preempt any  
9 requirements under section 375.014.

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

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

18 (2) Any tax assessed or assessment or mandated expenditure on a per-capita or per-  
19 employee basis shall be assessed against the client for covered employees and against the  
20 professional employer organization for its employees who are not covered employees coemployed  
21 with a client. Benefits or monetary consideration that meet the requirements of mandates imposed  
22 on a client and that are received by covered employees through the PEO either through payroll or  
23 through benefit plans sponsored by the PEO shall be credited against the client's obligation to fulfill  
24 such mandates; and

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

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