

**HOUSE BILL No. 2637**

By Committee on Commerce and Economic Development

2-6

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1 AN ACT concerning workers in shared employment arrangements;  
2 ***creating the professional employer organization registration act;***  
3 ***amending K.S.A. 2011 Supp. 40-955 and repealing the existing section.***  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 ***New Section 1. (a) The provisions of sections 1 through 11, and***  
7 ***amendments thereto, shall be known and may be cited as the***  
8 ***professional employer organization registration act.***

9 ***(b) The provisions of sections 1 through 11, and amendments***  
10 ***thereto, shall take effect and be in force from and after January 1, 2014.***

11 ***New Sec. 2. As used in sections 1 through 11, and amendments***  
12 ***thereto:***

13 ***(a) "Client" means any person who enters into a professional***  
14 ***employer agreement with a professional employer organization.***

15 ***(b) "Co-employer" means either a professional employer***  
16 ***organization or a client.***

17 ***(c) "Co-employment relationship" means a relationship which is***  
18 ***intended to be an ongoing relationship rather than a temporary or***  
19 ***project-specific relationship, and wherein the rights, duties and***  
20 ***obligations of an employer which arise out of an employment***  
21 ***relationship have been allocated between the employer and a***  
22 ***professional employer organization as co-employers pursuant to a***  
23 ***professional employer agreement entered into in accordance with the***  
24 ***provisions of sections 1 through 11, and amendments thereto. Under a***  
25 ***co-employment relationship:***

26 ***(1) The professional employer organization is entitled to enforce***  
27 ***only those employer rights, and is subject to only those employer***  
28 ***obligations, that are specifically allocated to the professional employer***  
29 ***organization by the professional employer agreement or by the***  
30 ***provisions of sections 1 through 11, and amendments thereto;***

31 ***(2) the client is entitled to enforce those employer rights, and is***  
32 ***obligated to provide and perform those employer obligations, that are***

1 *allocated to such client by the professional employer agreement or by the*  
2 *provisions of sections 1 through 11, and amendments thereto; and*

3 *(3) the client also is entitled to enforce any employer right, and is*  
4 *obligated to perform any obligation of an employer, that is not*  
5 *specifically allocated to the professional employer organization by the*  
6 *professional employer agreement or by the provisions of sections 1*  
7 *through 11, and amendments thereto.*

8 *(d) (1) "Covered employee" means an individual having a co-*  
9 *employment relationship with a professional employer organization and*  
10 *a client, who has received written notice of the co-employment*  
11 *relationship with the professional employer organization and the client,*  
12 *and such co-employment relationship was entered into pursuant to a*  
13 *professional employer agreement entered into in accordance with the*  
14 *provisions of sections 1 through 11, and amendments thereto.*

15 *(2) The term "covered employee" shall include individuals who are*  
16 *officers, directors, shareholders, partners or managers of the client, or*  
17 *members of a limited liability company that is a client, if: (A) The*  
18 *professional employer organization and the client have expressly agreed*  
19 *in the professional employer agreement that such individuals are*  
20 *covered employees; (B) such individuals satisfy the provisions of*  
21 *paragraph (1); and (C) such individuals act as operational managers or*  
22 *perform day-to-day operational services for the client.*

23 *(e) "Department" means the department of labor.*

24 *(f) "Person" means any individual, partnership, corporation,*  
25 *limited liability company, association or any other form of legally*  
26 *recognized entity.*

27 *(g) "Professional employer agreement" means a written contract*  
28 *entered into between a client and a professional employer organization*  
29 *that provides:*

30 *(1) For the co-employment of covered employees;*

31 *(2) for the allocation of employer rights and obligations between*  
32 *the client and the professional employer organization with respect to*  
33 *covered employees; and*

34 *(3) for the professional employer organization and the client to*  
35 *assume the responsibilities required by the provisions of sections 1*  
36 *through 11, and amendments thereto.*

37 *(h) (1) "Professional employer organization" means any person*  
38 *engaged in the business of providing professional employer services. A*  
39 *person engaged in the business of providing professional employer*  
40 *services shall be considered a "professional employer organization"*  
41 *regardless of such person's use of the term staff leasing company,*  
42 *administrative employer, employee leasing company or any name other*  
43 *than professional employer organization in describing such person's*

1 *business.*

2 (2) *For purposes of sections 1 through 11, and amendments thereto,*  
3 *the following shall not be considered a "professional employer*  
4 *organization," or as providing "professional employment services":*

5 (A) *Arrangements wherein a person, whose principal business*  
6 *activity is not entering into professional employer agreements, and*  
7 *which does not hold itself out as a professional employer organization,*  
8 *shares employees with a commonly owned company within the meaning*  
9 *of section 414(b) and (c) of the internal revenue code;*

10 (B) *independent contractor arrangements by which a person*  
11 *assumes responsibility for the product produced or service performed by*  
12 *such person or such person's agents and retains and exercises primary*  
13 *direction and control over the work performed by the individuals whose*  
14 *services are supplied under such arrangements; and*

15 (C) *providing temporary help services.*

16 (i) *"Professional employer group" means two or more professional*  
17 *employer organizations that are majority owned or commonly controlled*  
18 *by the same entity, parent or controlling person.*

19 (j) *"Professional employer services" means the service of entering*  
20 *into co-employment relationships.*

21 (k) *"Registrant" means a professional employer organization*  
22 *registered under the provisions of sections 1 through 11, and*  
23 *amendments thereto.*

24 (l) *"Secretary" means the secretary of the department of labor.*

25 (m) *"Temporary help services" means services consisting of a*  
26 *person:*

27 (1) *Recruiting and hiring such person's own employees;*

28 (2) *locating other organizations that need the services of such*  
29 *employees;*

30 (3) *assigning such employees: (A) To perform work at or services*  
31 *for such other organizations to support or supplement such other*  
32 *organizations' workforces; (B) to provide assistance in special work*  
33 *situations, including employee absences, skill shortages or seasonal*  
34 *workloads; or (C) to perform special assignments or projects; and*

35 (4) *customarily attempting to reassign such employees to other*  
36 *organizations when such employees finish an assignment.*

37 (n) *"Working capital" means current assets less current liabilities,*  
38 *as such terms are used by generally accepted accounting principles.*

39 *New Sec. 3. (a) Nothing in the provisions of sections 1 through 11,*  
40 *and amendments thereto, or in any professional employer agreement*  
41 *shall:*

42 (1) *Affect, modify or amend any collective bargaining agreement,*  
43 *or the rights or obligations of any client, professional employer*

1 *organization or covered employee under the national labor relations act,*  
2 *29 U.S.C. § 151 et seq., or the railway labor act, 45 U.S.C. § 151 et seq.;*

3 *(2) diminish, abolish or remove the rights of covered employees as*  
4 *to a client, or the obligations of such client to a covered employee,*  
5 *whether existing prior to or after the effective date of the professional*  
6 *employer agreement, including, but not limited to, rights and obligations*  
7 *arising from civil rights laws guaranteeing nondiscrimination in*  
8 *employment practices;*

9 *(3) affect, modify or amend any contractual relationship or*  
10 *restrictive covenant between a covered employee and any client in effect*  
11 *at the time a professional employer agreement becomes effective, nor*  
12 *prohibit or amend any contractual relationship or restrictive covenant*  
13 *that is entered into subsequently between a client and a covered*  
14 *employee. A professional employer organization shall have no*  
15 *responsibility or liability in connection with, or arising out of, any such*  
16 *existing or new contractual relationship or restrictive covenant unless*  
17 *the professional employer organization has specifically agreed otherwise*  
18 *in writing; or*

19 *(4) create any new or additional enforceable right of a covered*  
20 *employee against a professional employer organization that is not*  
21 *specifically provided by the professional employer agreement or by the*  
22 *provisions of sections 1 through 11, and amendments thereto.*

23 *(b) (1) Nothing in the provisions of sections 1 through 11, and*  
24 *amendments thereto, or in any professional employer agreement shall*  
25 *affect, modify or amend any local, state or federal licensing, registration*  
26 *or certification requirement applicable to any client or covered*  
27 *employee.*

28 *(2) A covered employee who is required to be licensed, registered or*  
29 *certified pursuant to local, state or federal law or rules and regulations*  
30 *shall be deemed to be an employee solely of the client for purposes of*  
31 *any such license, registration or certification requirement.*

32 *(3) A professional employer organization shall not be deemed to*  
33 *engage in any occupation, trade, profession or other activity that is*  
34 *subject to licensing, registration or certification requirements, or is*  
35 *otherwise regulated by a governmental entity solely by entering into and*  
36 *maintaining a co-employment relationship with a client or covered*  
37 *employee who is subject to such requirements or regulations.*

38 *(4) A client shall have the sole right to direct and control the*  
39 *professional or licensed activities of covered employees and of the*  
40 *client's business. Such covered employees and clients shall remain*  
41 *subject to regulation by the regulatory or governmental entity*  
42 *responsible for licensing, registration or certification of such covered*  
43 *employees or clients.*

1       (c) *With respect to a bid, contract, purchase order or agreement*  
2 *entered into with the state or a political subdivision of the state, a client's*  
3 *status or certification as a small, minority-owned, disadvantaged or*  
4 *woman-owned business enterprise, or as a historically underutilized*  
5 *business, shall not be affected because the client has entered into a*  
6 *professional employer agreement with a professional employer*  
7 *organization, or uses the services of a professional employer*  
8 *organization.*

9       *New Sec. 4. (a) A person engaged in the business of providing*  
10 *professional employer services pursuant to co-employment relationships*  
11 *in which all or a majority of the employees of a client are covered*  
12 *employees shall be registered pursuant to this section.*

13       (b) *A person who is not registered pursuant to this section shall not*  
14 *offer or provide professional employer services in this state, and shall*  
15 *not use the names PEO, professional employer organization, staff*  
16 *leasing company, employee leasing company, administrative employer or*  
17 *any other name or title representing professional employer services.*

18       (c) *Each applicant for registration shall submit an application to*  
19 *the secretary in such form and manner as prescribed by the secretary.*  
20 *The application shall contain the following information:*

21       (1) *The name or names under which the professional employer*  
22 *organization conducts business;*

23       (2) *the address of the principal place of business of the professional*  
24 *employer organization, and the address of each office the professional*  
25 *employer organization maintains in this state;*

26       (3) *the professional employer organization's taxpayer or employer*  
27 *identification number;*

28       (4) *a list, by jurisdiction, of each name under which the*  
29 *professional employer organization has operated in the preceding five*  
30 *years, including any alternative names, names of predecessors and, if*  
31 *known, successor business entities;*

32       (5) *a statement of ownership, which shall include the name and*  
33 *evidence of the business experience of any person that, individually, or*  
34 *acting in concert with one or more other persons, owns or controls,*  
35 *directly or indirectly, 15% or more of the equity interest of the*  
36 *professional employer organization;*

37       (6) *a statement of management, which shall include the name and*  
38 *evidence of the business experience of any individual who serves as*  
39 *president, chief executive officer or otherwise has the authority to act as*  
40 *senior executive officer of the professional employer organization; and*

41       (7) *a financial statement setting forth the financial condition of the*  
42 *professional employer organization or professional employer group,*  
43 *which shall comply with the provisions of subsection (h).*

1       ***(d) (1) Each professional employer organization operating within***  
2 ***this state as of the effective date of this act shall complete its initial***  
3 ***registration not later than 180 days after the effective date of this act.***  
4 ***Such initial registration shall be valid until 180 days from the end of the***  
5 ***professional employer organization's first fiscal year that is more than***  
6 ***one year after the effective date of this act.***

7       ***(2) Each professional employer organization not operating within***  
8 ***this state as of the effective date of this act shall complete its initial***  
9 ***registration prior to initiating operations within this state. If a***  
10 ***professional employer organization not registered in this state becomes***  
11 ***aware that an existing client, not based in this state, has employees and***  
12 ***operations in this state, the professional employer organization shall***  
13 ***either decline to provide professional employer services for those***  
14 ***employees, or notify the secretary within five business days of the***  
15 ***professional employer organization's knowledge of this fact and file a***  
16 ***limited registration application pursuant to subsection (g), or a full***  
17 ***registration if there are more than 50 covered employees employed by***  
18 ***such client. The secretary may issue an interim operating permit for the***  
19 ***period of time the application is pending if the professional employer***  
20 ***organization is currently registered or licensed by another state, and the***  
21 ***secretary determines it is in the best interests of the potential covered***  
22 ***employees.***

23       ***(e) Within 180 days after the end of a registrant's fiscal year, such***  
24 ***registrant shall renew its registration by notifying the secretary of any***  
25 ***changes in the information provided in such registrant's most recent***  
26 ***registration or renewal. A registrant's existing registration shall remain***  
27 ***in effect for the period of time the renewal application is pending.***

28       ***(f) Professional employer organizations in a professional employer***  
29 ***group may satisfy any reporting and financial requirements of this***  
30 ***section on a combined or consolidated basis, provided that each member***  
31 ***of the professional employer group guarantees the financial capacity***  
32 ***obligations required by section 6, and amendments thereto, of each other***  
33 ***member of the professional employer group. In the case of a***  
34 ***professional employer group that submits a combined or consolidated***  
35 ***audited financial statement, including entities that are not professional***  
36 ***employer organizations or that are not in the professional employer***  
37 ***group, the controlling entity of the professional employer group under***  
38 ***the consolidated or combined statement must guarantee the obligations***  
39 ***of the professional employer organizations in the professional employer***  
40 ***group.***

41       ***(g) (1) A professional employer organization is eligible for a limited***  
42 ***registration if such professional employer organization:***

43       ***(A) Submits a written request for limited registration in such form***

1 *and manner as prescribed by the secretary;*

2 *(B) is domiciled outside this state, and is licensed or registered as a*  
3 *professional employer organization in another state;*

4 *(C) does not maintain an office in this state, or directly solicit*  
5 *clients located or domiciled within this state; and*

6 *(D) does not have more than 50 covered employees employed or*  
7 *domiciled in this state on any given day.*

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

9 *(3) A professional employer organization requesting limited*  
10 *registration under this subsection shall provide the secretary with such*  
11 *information and documentation as required by the secretary to show that*  
12 *the professional employer organization qualifies for a limited*  
13 *registration.*

14 *(4) The provisions of section 6, and amendments thereto, shall not*  
15 *apply to applicants for limited registration.*

16 *(h) At the time of initial registration, the applicant shall submit the*  
17 *most recent audit of the applicant or such applicant's parent holding*  
18 *company, which audit shall not be older than 13 months. Thereafter, a*  
19 *professional employer organization or professional employer group shall*  
20 *file on an annual basis, within 180 days after the end of the professional*  
21 *employer organization's or parent holding company's fiscal year, a*  
22 *succeeding audit. An applicant may apply to the secretary for an*  
23 *extension of time to submit such audit, but any such request shall be*  
24 *accompanied by a letter from the auditor stating the reasons for the*  
25 *delay and the anticipated audit completion date. For the initial*  
26 *application, if the closing date of the audited financial statements*  
27 *required by this section is older than three months from the date of the*  
28 *application, the application also shall include updated, though*  
29 *unaudited, financial statements for the most recent quarter. The*  
30 *financial statement shall be prepared in accordance with generally*  
31 *accepted accounting principles and audited by an independent certified*  
32 *public accountant licensed to practice in the jurisdiction in which such*  
33 *accountant is located, and shall be without qualification as to the going*  
34 *concern status of the professional employer organization. A professional*  
35 *employer group may submit combined or consolidated audited financial*  
36 *statements to meet the requirements of this section. A professional*  
37 *employer organization that has not had sufficient operating history to*  
38 *have audited financials based upon at least 12 months of operating*  
39 *history shall meet the financial capacity requirements of subsection (f)*  
40 *and present financial statements reviewed by a certified public*  
41 *accountant.*

42 *(i) The department shall maintain a list of professional employer*  
43 *organizations registered under this section, and such list shall be readily*

1 available to the public by electronic or other means.

2 (j) The secretary, to the extent practical, shall permit the acceptance  
3 of electronic filings, including applications, documents, reports and  
4 other filings required by the secretary under this section. The secretary  
5 may provide for the acceptance of electronic filings and other assurance  
6 documents by an independent and qualified entity approved by the  
7 secretary that provides satisfactory assurance of compliance acceptable  
8 to the secretary consistent with, or in lieu of, the requirements of this  
9 section and section 6, and amendments thereto. The secretary shall  
10 permit a professional employer organization to authorize such entity  
11 approved by the secretary to act on the professional employer  
12 organization's behalf in complying with the registration requirements of  
13 this section, including electronic filings of information and payment of  
14 registration fees. Use of such an approved entity shall be optional and  
15 not mandatory for a registrant. Nothing in this subsection shall limit or  
16 change the secretary's authority to register or terminate registration of a  
17 professional employer organization, or to investigate or enforce any  
18 provision of sections 1 through 11, and amendments thereto.

19 (k) All records, reports and other information obtained from a  
20 professional employer organization under this section, except to the  
21 extent necessary for the proper administration of the provisions of  
22 sections 1 through 11, and amendments thereto, by the secretary, shall  
23 be confidential and shall not be published or open to public inspection  
24 other than to employees of the department in the performance of such  
25 employee's official duties.

26 *New Sec. 5.* (a) Upon filing an initial application for registration, a  
27 professional employer organization shall pay a fee in an amount not to  
28 exceed \$1,000.

29 (b) Upon filing a renewal application for registration, a  
30 professional employer organization shall pay a fee in an amount not to  
31 exceed \$500.

32 (c) Upon filing an initial or a renewal application for limited  
33 registration, a professional employer organization shall pay a fee in an  
34 amount not to exceed \$500.

35 (d) Upon filing an initial or a renewal application for registration, a  
36 professional employer group shall pay a fee in an amount determined by  
37 the secretary and adopted by rules and regulations.

38 (e) The secretary shall adopt rules and regulations establishing the  
39 fees to be charged pursuant to this section in such amounts as deemed  
40 reasonably necessary by the secretary for the administration of the  
41 provisions of sections 1 through 11, and amendments thereto, subject to  
42 the limitations on fee amounts set forth in subsections (a), (b) and (c).

43 (f) There is hereby created the professional employer organization



1 *fee fund. The secretary shall remit all moneys received from fees or*  
2 *penalties to the state treasurer in accordance with the provisions of*  
3 *K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*  
4 *remittance, the state treasurer shall deposit the entire amount in the*  
5 *state treasury to the credit of the professional employer organization fee*  
6 *fund. All expenditures from the professional employer organization fee*  
7 *fund shall be for the purposes of the administration of the provisions of*  
8 *sections 1 through 11, and amendments thereto, and shall be made in*  
9 *accordance with appropriation acts upon warrants of the director of*  
10 *accounts and reports issued pursuant to vouchers approved by the*  
11 *secretary, or the secretary's designee.*

12 *New Sec. 6. Except as provided by subsections (g) and (j) of section*  
13 *4, and amendments thereto, each professional employer organization, or*  
14 *collectively each professional employer group shall either:*

15 *(a) Maintain positive working capital upon registration as reflected*  
16 *in the financial statements submitted to the secretary with the initial*  
17 *registration application and each renewal application; or*

18 *(b) for a professional employer organization or professional*  
19 *employer group that does not have sufficient positive working capital as*  
20 *required in subsection (a), submit a bond, irrevocable letter of credit or*  
21 *securities with a minimum market value in an amount equal to the sum*  
22 *of the amount that would be necessary for such professional employer*  
23 *organization or professional employer group to comply with subsection*  
24 *(a) plus \$100,000 to the secretary at such time as the professional*  
25 *employer organization or professional employer group does not have*  
26 *sufficient working capital. Such bond shall be held by a depository*  
27 *designated by the secretary securing payment by the professional*  
28 *employer organization of all taxes, wages, benefits or other entitlement*  
29 *due to or with respect to covered employees, if the professional employer*  
30 *organization does not make such payments when due.*

31 *New Sec. 7. (a) No person shall knowingly enter into a co-*  
32 *employment relationship in which less than a majority of the employees*  
33 *of the client in this state are covered employees, or in which less than*  
34 *half of the payroll of the client in this state is attributable to covered*  
35 *employees.*

36 *(b) Except as otherwise provided in sections 1 through 11, and*  
37 *amendments thereto, or in the professional employer agreement, in each*  
38 *co-employment relationship:*

39 *(1) The client shall be entitled to exercise all rights and shall be*  
40 *obligated to perform all duties and responsibilities otherwise applicable*  
41 *to an employer in an employment relationship;*

42 *(2) the professional employer organization shall be entitled to*  
43 *exercise only those rights and obligated to perform only those duties and*

1 *responsibilities specifically required by the provisions of sections 1*  
2 *through 11, and amendments thereto, or in the professional employer*  
3 *agreement. The rights, duties and obligations of the professional*  
4 *employer organization as co-employer with respect to any covered*  
5 *employee shall be limited to those arising pursuant to the professional*  
6 *employer agreement or as required by the provisions of sections 1*  
7 *through 11, and amendments thereto, during the term of co-employment*  
8 *by the professional employer organization of such covered employee;*  
9 *and*

10 (3) *the client retains the exclusive right to direct and control the*  
11 *covered employees as is necessary to conduct the client's business, to*  
12 *discharge any of the client's fiduciary responsibilities or to comply with*  
13 *any licensure requirements applicable to the client or to the covered*  
14 *employees.*

15 (c) *Except as otherwise provided in sections 1 through 11, and*  
16 *amendments thereto, the co-employment relationship between the client*  
17 *and the professional employer organization, and between each co-*  
18 *employer and each covered employee, shall be governed by the*  
19 *professional employer agreement. Each professional employer*  
20 *agreement shall include the following:*

21 (1) *The allocation of rights, duties and obligations as described in*  
22 *this section;*

23 (2) *that the professional employer organization shall have the*  
24 *responsibility to pay wages to covered employees, to withhold, collect,*  
25 *report and remit payroll-related and unemployment taxes and, to the*  
26 *extent the professional employer organization has assumed such*  
27 *responsibility in the professional employer agreement, to make payments*  
28 *for employee benefits for covered employees;*

29 (3) *that, in addition to the client's right to hire, discipline and*  
30 *terminate a covered employee, the professional employer organization*  
31 *shall have a right to hire, discipline and terminate a covered employee*  
32 *only as may be necessary to fulfill the professional employer*  
33 *organization's responsibilities under the provisions of sections 1 through*  
34 *11, and amendments thereto, or the professional employer agreement.*

35 (d) *For purposes of this section, wages do not include any*  
36 *obligation between a client and a covered employee for payments*  
37 *beyond, or in addition to, the covered employee's salary, draw or regular*  
38 *rate of pay, such as bonuses, commissions, severance pay, deferred*  
39 *compensation, profit sharing or vacation, sick or other paid time off pay,*  
40 *unless the professional employer organization has expressly agreed to*  
41 *assume liability for such payments in the professional employer*  
42 *agreement.*

43 (e) *With respect to each professional employer agreement entered*

1 *into by a professional employer organization, such professional*  
2 *employer organization shall provide written notice to each covered*  
3 *employee affected by such agreement. The professional employer*  
4 *organization shall provide and the client is required to post the following*  
5 *notices in a conspicuous place at the client's worksite:*

6 *(1) Notice of the general nature of the co-employment relationship*  
7 *between and among the professional employer organization, the client*  
8 *and such covered employees; and*

9 *(2) any notices required by the state relating to unemployment*  
10 *compensation and minimum wages.*

11 *(f) Except as otherwise provided in the professional employer*  
12 *agreement:*

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

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

20 *(3) a client shall not be liable for the acts, errors or omissions of a*  
21 *professional employer organization, or of any covered employee of the*  
22 *client and a professional employer organization when such covered*  
23 *employee is acting under the express direction and control of the*  
24 *professional employer organization;*

25 *(4) nothing in this subsection shall limit any contractual liability or*  
26 *obligation specifically provided in a professional employer agreement;*

27 *(5) a covered employee is not, solely as the result of being a covered*  
28 *employee of a professional employer organization, an employee of the*  
29 *professional employer organization for purposes of general liability*  
30 *insurance, fidelity bonds, surety bonds, employer's liability which is not*  
31 *covered by workers' compensation or any other liability insurance*  
32 *carried by the professional employer organization unless the covered*  
33 *employee is included for such purposes by specific reference in the*  
34 *professional employer agreement and in any applicable prearranged*  
35 *employment contract, insurance contract or bond;*

36 *(6) a professional employer organization shall not sell, solicit or*  
37 *negotiate insurance on behalf of a client, covered employee or other*  
38 *employee of a client except through a person or entity licensed to do so*  
39 *pursuant state law;*

40 *(7) a professional employer organization shall sponsor health and*  
41 *workers' compensation plans for its covered employees only on a fully*  
42 *insured basis from an insurance carrier admitted to do business in this*  
43 *state;*

1       (8) *for purposes of this state or any county, municipality or other*  
2 *political subdivision thereof:*

3       (A) *Covered employees whose services are subject to sales tax shall*  
4 *be deemed the employees of the client for purposes of collecting and*  
5 *levying sales tax on the services performed by the covered employee, and*  
6 *nothing in the provisions of sections 1 through 11, and amendments*  
7 *thereto, shall be construed to relieve a client of any sales tax liability*  
8 *with respect to such client's goods or services;*

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

18       (C) *any tax assessed or assessment or mandated expenditure on a*  
19 *per capita or per employee basis shall be assessed against the client for*  
20 *covered employees and against the professional employer organization*  
21 *for its employees who are not covered employees co-employed with a*  
22 *client, and any benefits or monetary consideration that meets the*  
23 *requirements of mandates imposed on a client and that are received by*  
24 *covered employees through the professional employer organization*  
25 *either through payroll or through benefit plans sponsored by the*  
26 *professional employer organization shall be credited against the client's*  
27 *obligation to fulfill such mandates; and*

28       (D) *in the case of a tax or an assessment imposed or calculated*  
29 *upon the basis of total payroll, the professional employer organization*  
30 *shall be eligible to apply any small business allowance or exemption*  
31 *available to the client for the covered employees for the purpose of*  
32 *computing the tax.*

33       *New Sec. 8. A client and a professional employer organization shall*  
34 *each be deemed an employer under the laws of this state for purposes of*  
35 *sponsoring retirement and employee welfare benefit plans for its covered*  
36 *employees.*

37       *New Sec. 9. (a) It shall be a violation of the provisions of sections 1*  
38 *through 11, and amendments thereto:*

39       (1) *For a person to knowingly offer or provide professional*  
40 *employer services or use the names PEO, professional employer*  
41 *organization, staff leasing, employee leasing, administrative employer or*  
42 *other title representing professional employer services without*  
43 *registering in accordance with section 4, and amendments thereto;*

1       (2) *for a person to knowingly provide false or fraudulent*  
2 *information to the secretary in conjunction with any registration*  
3 *application, renewal or in any report required under the provisions of*  
4 *sections 4 or 6, and amendments thereto;*

5       (3) *for a person to knowingly make a material misrepresentation to*  
6 *the secretary, or other governmental agency to which such person is*  
7 *required to submit a report or information;*

8       (4) *for a professional employer organization or a controlling person*  
9 *of a professional employer organization to be convicted of a crime: (A)*  
10 *That relates to the operation of a professional employer organization;*  
11 *(B) that relates to the ability of the professional employer organization*  
12 *or a controlling person of a professional employer organization to*  
13 *operate a professional employer organization; or (C) pursuant to 18*  
14 *U.S.C. § 1033; or*

15       (5) *for a person to willfully violate any provision of sections 1*  
16 *through 11, and amendments thereto, or any rule or regulation adopted*  
17 *by the secretary pursuant thereto.*

18       (b) *Upon a finding, and after notice and an opportunity for a*  
19 *hearing, that a professional employer organization, or a controlling*  
20 *person of a professional employer organization, or a person offering*  
21 *professional employer services has committed a violation under this*  
22 *section, the secretary may:*

23           (1) *Deny the application for registration;*

24           (2) *revoke, restrict or refuse to renew a registration;*

25           (3) *impose a civil fine in an amount not to exceed \$10,000 for each*  
26 *material violation of the provisions of sections 1 through 11, and*  
27 *amendments thereto;*

28           (4) *place the registrant on probation for such period of time and*  
29 *subject to such conditions as the secretary shall specify; or*

30           (5) *issue an order to cease and desist those professional employer*  
31 *organization activities and services specified in such order.*

32       (c) *The provisions of this section shall be subject to the Kansas*  
33 *judicial review act.*

34       *New Sec. 10. The secretary shall adopt such rules and regulations*  
35 *as the secretary deems necessary to implement and enforce the*  
36 *provisions of sections 1 through 11, and amendments thereto.*

37       *New Sec. 11. If any provision of sections 1 through 11, and*  
38 *amendments thereto, or any portion thereof, is declared invalid or*  
39 *unconstitutional, such invalidity shall not affect the validity or*  
40 *constitutionality of the remaining provisions of sections 1 through 11,*  
41 *and amendments thereto.*

42       ~~Section 1.~~ *Sec. 12. K.S.A. 2011 Supp. 40-955 is hereby amended to*  
43 *read as follows: 40-955. (a) Every insurer shall file with the commissioner,*

1 except as to inland marine risks where general custom of the industry is  
2 not to use manual rates or rating plans, every manual of classifications,  
3 rules and rates, every rating plan, policy form and every modification of  
4 any of the foregoing which it proposes to use. Every such filing shall  
5 indicate the proposed effective date and the character and extent of the  
6 coverage contemplated and shall be accompanied by the information upon  
7 which the insurer supports the filings. A filing and any supporting  
8 information shall be open to public inspection after it is filed with the  
9 commissioner, except that disclosure shall not be required for any  
10 information contained in a filing or in any supporting documentation for  
11 the filing when such information is either a trade secret or copyrighted. For  
12 the purposes of this section, the term "trade secret" shall have the meaning  
13 ascribed to it in K.S.A. 60-3320, and amendments thereto. An insurer may  
14 satisfy its obligations to make such filings by authorizing the  
15 commissioner to accept on its behalf the filings made by a licensed rating  
16 organization or another insurer. Nothing contained in this act shall be  
17 construed to require any insurer to become a member or subscriber of any  
18 rating organization.

19 (b) Certificate of insurance forms must be filed with the  
20 commissioner of insurance and approved prior to use. Notwithstanding the  
21 "large risk" filing exemption in subsection (j), a certificate of insurance  
22 cannot be used to modify, alter or amend the insurance policy it describes.  
23 The certificate of insurance shall contain the following or similar  
24 language: The certificate of insurance neither affirmatively nor negatively  
25 amends, extends or alters the coverage afforded by the policies listed  
26 thereon. An industry standard setting organization may be authorized by  
27 the commissioner of insurance to file certificate of insurance forms on  
28 behalf of authorized insurers.

29 (c) Any rate filing for the basic coverage required by K.S.A. 40-3401  
30 et seq., and amendments thereto, loss costs filings for workers  
31 compensation, and rates for assigned risk plans established by article 21 of  
32 chapter 40 of the Kansas Statutes Annotated or rules and regulations  
33 established by the commissioner shall require approval by the  
34 commissioner before its use by the insurer in this state. As soon as  
35 reasonably possible after such filing has been made, the commissioner  
36 shall in writing approve or disapprove the same, except that any filing  
37 shall be deemed approved unless disapproved within 30 days of receipt of  
38 the filing.

39 (d) Any other rate filing, except personal lines filings, shall become  
40 effective on filing or any prospective date selected by the insurer, subject  
41 to the commissioner disapproving the same if the rates are determined to  
42 be inadequate, excessive, unfairly discriminatory or otherwise fails to meet  
43 the requirements of this act. Personal lines rate filings shall be on file for a

1 waiting period of 30 days before becoming effective, subject to the  
2 commissioner disapproving the same if the rates are determined to be  
3 inadequate, excessive, unfairly discriminatory or otherwise fail to meet  
4 requirements of this act. The term "personal lines" shall mean insurance  
5 for noncommercial automobile, homeowners, dwelling fire-and-renters  
6 insurance policies, as defined by the commissioner by rules and  
7 regulations. A filing complies with this act unless it is disapproved by the  
8 commissioner within the waiting period or pursuant to subsection (f).

9 (e) In reviewing any rate filing the commissioner may require the  
10 insurer or rating organization to provide, at the insurer's or rating  
11 organization's expense, all information necessary to evaluate the  
12 reasonableness of the filing, to include payment of the cost of an actuary  
13 selected by the commissioner to review any rate filing, if the department of  
14 insurance does not have a staff actuary in its employ.

15 (f) (1) (A) If a filing is not accompanied by the information required  
16 by this act, the commissioner shall promptly inform the company or  
17 organization making the filing. The filing shall be deemed to be complete  
18 when the required information is received by the commissioner or the  
19 company or organization certifies to the commissioner the information  
20 requested is not maintained by the company or organization and cannot be  
21 obtained.

22 (B) If the commissioner finds a filing does not meet the requirements  
23 of this act, the commissioner shall send to the insurer or rating  
24 organization that made the filing, written notice of disapproval of the  
25 filing, specifying in what respects the filing fails to comply and stating the  
26 filing shall not become effective.

27 (C) If at any time after a filing becomes effective, the commissioner  
28 finds a filing does not comply with this act, the commissioner shall after a  
29 hearing held on not less than 10 days' written notice to every insurer and  
30 rating organization that made the filing issue an order specifying in what  
31 respects the filing failed to comply with the act, and stating when, within a  
32 reasonable period thereafter, the filing shall be no longer effective. Copies  
33 of the order shall be sent to such insurer or rating organization. The order  
34 shall not affect any contract or policy made or issued prior to the  
35 expiration of the period set forth in the order.

36 (2) (A) In the event an insurer or organization has no legally effective  
37 rate because of an order disapproving rates, the commissioner shall specify  
38 an interim rate at the time the order is issued. The interim rate may be  
39 modified by the commissioner on the commissioner's own motion or upon  
40 motion of an insurer or organization.

41 (B) The interim rate or any modification thereof shall take effect  
42 prospectively in contracts of insurance written or renewed 15 days after  
43 the commissioner's decision setting interim rates.

1 (C) When the rates are finally determined, the commissioner shall  
2 order any overcharge in the interim rates to be distributed appropriately,  
3 except refunds to policyholders the commissioner determines are de  
4 minimis may not be required.

5 (3) (A) Any person or organization aggrieved with respect to any  
6 filing that is in effect may make written application to the commissioner  
7 for a hearing thereon, except that the insurer or rating organization that  
8 made the filing may not proceed under this subsection. The application  
9 shall specify the grounds to be relied on by the applicant.

10 (B) If the commissioner finds the application is made in good faith,  
11 that the applicant would be so aggrieved if the applicant's grounds are  
12 established, and that such grounds otherwise justify holding such a  
13 hearing, the commissioner shall, within 30 days after receipt of the  
14 application, hold a hearing on not less than 10 days' written notice to the  
15 applicant and every insurer and rating organization that made such filing.

16 (C) Every rating organization receiving a notice of hearing or copy of  
17 an order under this section, shall promptly notify all its members or  
18 subscribers affected by the hearing or order. Notice to a rating organization  
19 of a hearing or order shall be deemed notice to its members or subscribers.

20 (g) No insurer shall make or issue a contract or policy except in  
21 accordance with filings which have been filed or approved for such insurer  
22 as provided in this act.

23 (1) On an application for personal motor vehicle insurance where the  
24 applicant has applied for collision or comprehensive coverage, the  
25 applicant shall be allowed to identify a lienholder listed on the certificate  
26 of title for the motor vehicle described in the application.

27 (2) On an application for property insurance on real property, the  
28 applicant shall be allowed to identify a mortgagee listed on a mortgage for  
29 the real property described in the application.

30 (h) The commissioner may adopt rules and regulations to allow  
31 suspension or modification of the requirement of filing and approval of  
32 rates as to any kind of insurance, subdivision or combination thereof, or as  
33 to classes of risks, the rates for which cannot practicably be filed before  
34 they are used.

35 (i) Except for workers compensation and employer's liability line, the  
36 following categories of commercial lines risks are considered special risks  
37 which are exempt from the filing requirements in this section: (1) Risks  
38 that are written on an excess or umbrella basis; (2) commercial risks, or  
39 portions thereof, that are not rated according to manuals, rating plans, or  
40 schedules including "a" rates; (3) large risks; and (4) special risks  
41 designated by the commissioner, including, but not limited to, risks insured  
42 under highly protected risks rating plans, commercial aviation, credit  
43 insurance, boiler and machinery, inland marine, fidelity, surety and



1 guarantee bond insurance risks.

2 (j) For the purposes of this subsection, "large risk" means: (1) An  
3 insured that has total insured property values of \$5,000,000 or more; (2) an  
4 insured that has total annual gross revenues of \$10,000,000 or more; or (3)  
5 an insured that has in the preceding calendar year a total paid premium of  
6 \$50,000 or more for property insurance, \$50,000 or more for general  
7 liability insurance, or \$100,000 or more for multiple lines policies.

8 (k) The exemption for any large risk contained in subsection (h) shall  
9 not apply to workers compensation and employer's liability insurance,  
10 insurance purchasing groups, and the basic coverage required by K.S.A.  
11 40-3401 et seq., and amendments thereto.

12 (l) Underwriting files, premium, loss and expense statistics, financial  
13 and other records pertaining to special risks written by any insurer shall be  
14 maintained by the insurer and shall be subject to examination by the  
15 commissioner.

16 (m) (1) *Except as permitted by paragraph (2)*, any entity that  
17 purchases a workers compensation policy for the covered employees of  
18 more than one employer pursuant to a shared employment relationship  
19 with each employer must purchase the workers compensation policy on a  
20 separate multiple coordinate policy basis. Such workers compensation  
21 policies must be issued pursuant to K.S.A. 44-501 et seq., and  
22 amendments thereto, from an insurer holding a certificate of authority to  
23 do business in this state and providing workers compensation coverage.

24 ~~(2) The commissioner of insurance may allow an insurer to issue~~  
25 ~~coverage through a master policy if the commissioner is satisfied that the~~  
26 ~~insurer is able to track and report individual client experience to the~~  
27 ~~advisory organization in an acceptable fashion. All such master policies~~  
28 ~~must be filed with the commissioner for prior approval. The use of master~~  
29 ~~policies for the covered employees of more than one employer pursuant to~~  
30 ~~a shared employment relationship shall be permitted if such master policy~~  
31 ~~is filed with the commissioner at least 30 days prior to the use of such~~  
32 ~~master policy and the commissioner is satisfied that the insurer is able to~~  
33 ~~track and report individual client experience to the advisory organization~~  
34 ~~in an acceptable fashion. If the commissioner determines that the master~~  
35 ~~policy or the insurer cannot track and report individual client experience~~  
36 ~~to the advisory organization in an acceptable fashion, the commissioner~~  
37 ~~shall disapprove such master policy and shall notify the insurer in writing.~~  
38 ~~Any insurer who issues a policy which is disapproved under this statute~~  
39 ~~shall be entitled to a hearing before the commissioner.~~

40 (3) The commissioner of insurance shall be authorized to adopt such  
41 rules and regulations as are reasonable and necessary to carry out the  
42 purpose and the provisions of this subsection.

43 ~~(4) The provisions of this subsection shall not apply to any workers~~

1 ~~compensation policies purchased on or before December 31, March 31,~~  
2 ~~2013.~~

3       Sec. ~~2~~ **13**. K.S.A. 2011 Supp. 40-955 is hereby repealed.

4       Sec. ~~3~~ **14**. This act shall take effect and be in force from and after  
5 **{March 31, 2013, and}** its publication in the statute book.

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