



**State of Tennessee**  
**PUBLIC CHAPTER NO. 1081**

**SENATE BILL NO. 2633**

**By Johnson**

Substituted for: House Bill No. 2747

By Haynes, Phillip Johnson

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 56 and Title 62, Chapter 43, relative to professional employer organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, Chapter 43, is amended by deleting the chapter in its entirety and by substituting instead the following:

62-43-101. This chapter shall be known and may be cited as the "Tennessee Professional Employer Organization Act".

62-43-102. As used in this chapter, unless the context otherwise requires:

(1) "Applicant" means a person seeking an initial or renewal registration pursuant to this chapter;

(2) "Audit" means an engagement performed in accordance with the Statements on Auditing Standards (SAS);

(3) "Client" means any person who enters into a professional employer agreement with a professional employer organization;

(4) "Co-employer" means either a professional employer organization or a client;

(5) "Co-employment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been shared and allocated between co-employers pursuant to a professional employer agreement and this chapter;

(6) "Covered employee":

(A) Means an individual having a co-employment relationship with a professional employer organization and a client who meets all of the following criteria:

(i) The individual has received written notice of co-employment with the professional employer organization; and

(ii) The individual's co-employment relationship results pursuant to a professional employer agreement; and

(B) Includes individuals who are officers, directors, shareholders, partners, and managers of the client; provided, that such individuals meet the criteria of subdivision (6)(A) and act as operational managers or perform day-to-day operational services for the client, unless the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals shall not be covered employees;

(7) "Department" means the Department of Commerce and Insurance;

(8) "Local governmental entity" means a governing body, board, commission, committee or department of a municipality or county;

(9) "Person" has the same meaning as in § 1-3-105 and as amended;

(10) "Professional employer agreement" means a written contract between a client and a professional employer organization that provides:

(A) For the co-employment of covered employees;

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

(C) That the professional employer organization and the client assume the responsibilities required by this chapter;

(11) "Professional employer organization":

(A) Means any person engaged in the business of providing professional employer services, regardless of the use of the term or conducting business as a "professional employer organization," "PEO," "staff leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name; and

(B) Includes a professional employer organization group;

(12) "Professional employer organization benefit and welfare plan" means a plan offered to covered employees of a professional employer organization registered pursuant to this chapter;

(13) "Professional employer organization group" means two (2) or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent or controlling person;

(14) "Professional employer services" means the service of entering into co-employment relationships under this chapter in which all or a majority of the employees providing services to a client, a division or work unit of a client are covered employees;

(15) "Registrant" means a professional employer organization registered under this chapter;

(16) "Small operations" means an applicant or registrant with less than fifty million dollars (\$50,000,000) in annualized wages;

(17) "Temporary help services" means services consisting of a person:

(A) Recruiting and hiring its own employees;

(B) Finding other organizations that need the services of its employees;

(C) Assigning its employees:

(i) To perform work at or services for the other organizations to support or supplement the other organizations' workforces;

(ii) To provide assistance in special work situations such as, but not limited to, employee absences, skill shortages or seasonal workloads; or

(iii) To perform special assignments or projects; and

(D) Customarily attempting to reassign its employees to other organizations when they finish each assignment; and

(18) "Working capital" means the excess of current assets over current liabilities as determined by generally accepted accounting principles.

62-43-103.

(a)(1) The department may promulgate rules and prescribe forms reasonably necessary for the administration and enforcement of §§ 62-43-106, 62-43-107 and 62-43-112.

(2) Rules shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 and as amended.

(b)(1) The professional employer organization advisory council is created and shall consist of five (5) members to be appointed by the governor to four (4) year terms. A term shall become effective on appointment and continue until a successor has been appointed. A vacancy shall be filled by appointment to the unexpired term by the governor.

(2)(A) Three (3) members of the council shall be individuals owning or working for a professional employer organization.

(B) The remaining two (2) members shall:

(i) Be residents of this state; and

(ii) Not be, or ever have been, connected with a professional employer organization.

(C) Among the members described in subdivision (b)(2)(B):

(i) One (1) such member shall represent the consumer interests of this state; and

(ii) One (1) such member shall be a representative of the department.

(3) The council shall elect a chair and other officers to a term of one (1) year or until a successor is elected. Meetings may be called by the chair or by any two (2) members. A meeting may be held by electronic means. Three (3) members shall constitute a quorum to conduct business. Whenever vacancies prevent a quorum, the remaining members shall constitute a quorum for the purposes of recommending to the governor appointments to the council.

(4) Members shall serve without compensation.

(5) The following are the powers and duties of the council:

(A) Determine its rules of order and procedure;

(B) Recommending to the governor appointments to the council;

(C) Send notice of its agenda and proceedings to any requesting person;

(D) Petition the department, pursuant to § 4-5-201 and as amended; and

(E) Advise the department on this chapter.

(6)(A) The council is attached to the department for the purposes of administration and cooperation.

(B) The department shall notify the council of any action pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 and as amended, relating to a rule promulgated pursuant to this chapter.

(C) Any nonprofit organization representing five (5) or more professional employer organizations registered in this state may recommend appointments to the council.

62-43-104. All records, reports and other information obtained from an applicant or registrant under this chapter, except to the extent necessary for the proper administration of this chapter by the department, shall be confidential and shall not be published or open to public inspection other than to public employees in the actual performance of their public duties.

62-43-105.

(a) Nothing contained in this chapter or in any professional employer agreement shall affect, modify or amend any collective bargaining agreement, or the rights or obligations of any client, professional employer organization or covered employee under:

(1) The National Labor Relations Act, compiled in 29 U.S.C. §§ 131 et seq. and as amended;

(2) The Railway Labor Act, compiled in 45 U.S.C. §§ 151 et seq. and as amended; or

(3) Applicable state labor relations law, compiled in Titles 12 and 50 and as amended.

(b) Nothing in this chapter or in any professional employer agreement shall:

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

(2) Affect, modify or amend any contractual relationship or restrictive covenant between a covered employee and any client in effect at the time a professional employer agreement becomes effective;

(3) Prohibit or amend any contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee;

(4) Impose responsibility or liability on a professional employer organization in connection with, or arising out of, any such existing or new contractual relationship or restrictive covenant between the client and a covered employee unless the professional employer organization has specifically agreed otherwise in writing; or

(5) Create any new or additional enforceable right of a covered employee against a professional employer organization that is not specifically provided by the professional employer agreement or this chapter.

(c) Nothing contained in this chapter or any professional employer agreement shall affect, modify or amend any state, local governmental entity or federal licensing, registration, or certification requirement applicable to any client or covered employee.

(1) A covered employee who must be licensed, registered or certified according to law or regulation is deemed solely an employee of the client for purposes of any such license, registration or certification requirement.

(2) A professional employer organization shall not be deemed to engage in any occupation, trade, profession or other activity that is subject to licensing, registration or certification requirements, or is otherwise regulated by a local governmental entity solely by entering into and maintaining a co-employment relationship with a covered employee who is subject to such requirements or regulation.

(3) A client shall have the sole right of direction and control of the professional or licensed activities of covered employees and of the client's business. Such covered employees and clients shall remain subject to regulation by the state or local governmental entity responsible for licensing, registration or certification of such covered employees or clients.

(d)(1) For purposes of determination of tax credits and other economic incentives provided by this state or a local government entity and based on

employment, covered employees shall be deemed employees solely of the client.

(2) A client shall be entitled to the benefit of any tax credit, economic incentive or other benefit arising as the result of the employment of covered employees of such client.

(3) Notwithstanding that the professional employer organization is the W-2 reporting employer, the client shall continue to qualify for such benefit, incentive or credit.

(4) If the grant or amount of any such credit, incentive or benefit is based on the number of employees, then each client shall be treated as employing only those covered employees co-employed by the client. Covered employees working for other clients of the professional employer organization shall not be counted.

(5) Each professional employer organization shall provide, upon request by a client, an agency or department of this state or local governmental entity, employment information reasonably required by any agency or department of this state responsible for administration of any such tax credit, economic incentive or benefit and necessary to support any request, claim, application or other action by a client seeking any such tax credit, economic incentive or benefit.

(e) With respect to a bid, contract, purchase order or agreement entered into with this state or a local governmental entity, a client company's status or certification as a Tennessee small business, minority-owned business, Tennessee service-disabled veteran-owned business, disadvantaged business or woman-owned business, or as a historically underutilized business enterprise, is not affected because the client company has entered into an agreement with a professional employer organization or uses the services of a professional employer organization.

(f) In a co-employment relationship:

(1) The professional employer organization is entitled to enforce only such employer rights, and is subject to only those obligations, specifically allocated to the professional employer organization by the professional employer agreement or this chapter;

(2) The client is entitled to enforce:

(A) The rights, and obligated to provide and perform the employer obligations, allocated to the client by the professional employer agreement and this chapter; and

(B) Any right or obligation, not specifically allocated to the professional employer organization by the professional employer agreement or this chapter.

(g) A person is not a professional employer organization if the person:

(1)(i) Engages in a principal business activity that does not involve entering into professional employer arrangements;

(ii) Does not hold itself out as a professional employer organization; and

(iii) Shares employees with a commonly owned company within the meaning of §§ 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(2) Provides temporary help services; or

(3) Assumes responsibility through independent contractor arrangements for the product produced or service performed by such person or his agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements.

62-43-106.

(a)(1) No person shall provide, advertise or otherwise hold itself out as providing professional employer services in this state unless such person is registered under this chapter.

(2) The department shall register an applicant meeting the requirements of this chapter.

(3)(A) If the department denies registration to an applicant, the department shall provide written notice that includes the reasons for the denial. The applicant shall have sixty (60) days from the date the notice was sent to:

(i) Submit proof to the department that the reasons for the denial have been cured; or

(ii) Request, in writing, reconsideration from the commissioner.

(B) The department shall provide written notice of its determination after considering the applicant's submission or request under subdivisions (a)(3)(A)(i) or (a)(3)(A)(ii) within thirty (30) days of receiving a submission or request.

(C)(i) After submission of a written request for consideration, an initial applicant shall have the right to appear before the commissioner or the commissioner's designee to present the applicant's request for reconsideration. If an applicant wishes to appear before the commissioner or the commissioner's designee to present their request for reconsideration, then the department shall provide written notice of its determination within thirty (30) days after such appearance; provided, that it is the commissioner's decision as to whether or not the defect or defects have been cured and whether or not to issue the registration.

(ii) An applicant who is not an initial applicant may request a hearing pursuant to § 4-5-320 before the commissioner makes a final determination to deny a renewal registration.

(4) Registration under this chapter shall remain in force for two (2) years from the date of issuance of registration.

(b) Each applicant for initial registration under this chapter shall submit to the department the following:

(1) Any name under which the applicant conducts business;

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

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

(4) A list by state of each name under which the applicant has operated in the preceding five (5) years, including any alternative names, names of predecessors and, if known, successor business entities;

(5) A statement of ownership, which shall include the name, address and principal occupation of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly:

(A) Twenty percent (20%) or more of the equity interests of the applicant who is a publicly traded entity; or

(B) Ten percent (10%) or more of the equity interest of the applicant who is not a publicly traded entity;

(6) A statement of management, which shall include the name, address and principal occupation of any person who serves as president, chief executive officer or otherwise has the authority to act as a senior executive officer of the applicant;

(7) If the applicant or a person listed in subdivisions (b)(5) or (6) has in any jurisdiction:

(A) Been convicted of or entered a plea of *nolo contendere* to a crime relating to the operation of a professional employer organization;

(B) Been disciplined relating to the operation of a professional employer organization;

(C) Been convicted of or entered a plea of *nolo contendere* to an offense relating to bribery, dishonesty or fraud;

(D) Been convicted of or entered a plea of *nolo contendere* to any felony; or

(E) Been found liable for civil fraud;

(8) A financial statement setting forth the financial condition of the applicant; provided, that:

(A) The applicant shall submit the most recent audit of the applicant with its initial application;

(B) No financial statement submitted with the initial application shall be older than thirteen (13) months from the date of the report of the auditor;

(C) Within one hundred eighty (180) days of the close of an applicant's fiscal year, the applicant shall submit its most recent financial statement; provided, that an applicant may apply to the department for additional time to submit its financial statements, and such a request shall be accompanied by a letter from the auditors stating the reasons for the delay and the anticipated audit completion date;

(D) Financial statements submitted pursuant to this subdivision (b)(8) 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; provided, that no resulting report of the auditor shall include:

(i) A qualification or disclaimer of opinion as to adherence to generally accepted accounting principles; or

(ii) A statement expressing substantial doubt about the ability of the applicant to continue as a going concern;

(E) An applicant may submit combined or consolidated audited financial statements to meet the requirements of this section;

(F) Notwithstanding subdivision (b)(8)(D)(i):

(i) An applicant that has not had sufficient operating history to have financial statements based upon at least twelve (12) months of operating history shall meet the financial capacity requirements in subsection (c) and submit financial statements reviewed by an independent certified public accountant; and

(ii) If an applicant is a subsidiary or is related to a variable interest entity, then the applicant may submit financial statements of the professional employer organization, professional employer organization group or the controlling organization;

(G)(i) In lieu of audited financial statements required by this subdivision (b)(8), an applicant or registrant with small operations may submit financial statements compiled by an independent certified public accountant.

(ii) The department shall consider an applicant or registrant a professional employer organization with small operations if the applicant or registrant submits to the department:

(a) A request to be deemed a PEO with small operations on a form prescribed by the department; and

(b) The most recent fourth quarter federal Form 941 of the applicant or registrant and any related person that offers professional employer services; provided, the aggregate annualized wages shall be less than fifty million dollars (\$50,000,000).

(iii) The form required in subdivision (b)(8)(G)(ii) shall be submitted to the department in any year the applicant or registrant seeks to be considered a professional employer organization with small operations.

(iv) In any year that an applicant or registrant with small operations does not meet the requirements to maintain such status, that applicant or registrant shall have six (6) months from the close of the current fiscal year of the applicant or registrant to either:

(a) Meet the requirements of this subdivision (b)(8)(G); or

(b) Submit audited financial statements;

(9) Evidence of workers' compensation coverage for covered employees in this state who are subject to the Tennessee Workers' Compensation Law, compiled in Title 50, Chapter 6 and as amended; and

(10) A written statement in regards to whether the applicant sponsors a self-insured health plan.

(c) Except as provided by subdivision (b)(8)(F)(i) and subsection (f), an applicant shall maintain either:

(1) Positive working capital at registration as reflected in the financial statements submitted to the department under subdivision (b)(8); or

(2) An applicant that does not have positive working capital may provide a bond, irrevocable letter of credit or securities with a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000) to the department; provided, that such instruments are to be held by an institution designated by the department, securing payment by the applicant of all taxes, wages, benefits or other entitlements due to or with respect to covered employees if the applicant does not make such payments when due.

(d)(1) No later than one hundred eighty (180) days after the applicant's fiscal year that is the second year of its current registration, the applicant may renew its registration by:

(A) Notifying the department of any changes in the information submitted under subsection (b); and

(B) Submitting the financial statement required under subdivision (b)(8) or the alternatives under subdivision (b)(8)(G) or subsection (c), as applicable.

(2) An applicant's existing registration shall remain in effect during the pendency of a renewal application.

(e) An applicant who is a professional employer organization group may satisfy the requirements in this section on a combined or consolidated basis provided that each member of the professional employer organization group guarantees the financial capacity obligations under this chapter of each other member of the professional employer organization group. In the case of a professional employer organization group that submits a combined or consolidated audited financial statement including entities that are not professional employer organizations or that are not in the professional employer organization group, the controlling entity of the professional employer organization group under the consolidated or combined statement shall guarantee the obligations of the professional employer organizations in the professional employer organization group.

(f)(1) An applicant is eligible for a limited registration under this chapter if such applicant:

(A) Submits a request for limited registration to the department;

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

(C) Does not maintain an office in this state or directly solicits clients located or domiciled within this state; and

(D) Does not have more than fifty (50) covered employees employed or domiciled in this state.

(2) Limited registration is valid for two (2) years and may be renewed.

(3) An applicant seeking limited registration under this subsection (f) shall provide the department with information and documentation necessary to show that the applicant qualifies for a limited registration.

(4) Subdivision (b)(8) and subsection (c) shall not apply to applicants for limited registration.

(g) Notwithstanding § 62-43-104, the department shall maintain a list of registrants that is readily available to the public by electronic or other means.

(h)(1) The department shall to the extent practical, permit the acceptance of electronic filings in conformance with the Uniform Electronic Transactions Act, compiled in Title 47, Chapter 10 and as amended, including applications, documents, reports and other filings required by this chapter.

(2) The department may provide for the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements in subsections (b) and (c), and other requirements of this chapter or the rules promulgated pursuant to it.

(3) The department may permit an applicant to authorize such an approved assurance organization to act on the applicant's behalf in complying with the registration requirements of this chapter, including electronic filings of information and payment of registration fees; provided, that use of such an approved assurance organization shall be optional and not mandatory for an applicant.

(4) Nothing in this subsection (h) shall limit or change the department's authority to register or terminate registration of a registrant or applicant or to investigate or enforce this chapter.

(i) A registrant shall:

(1) Submit to the department, within ninety (90) days of the end of each calendar quarter, a statement by an independent certified public accountant or independent public accountant that for the quarter all applicable payroll taxes have been paid on a timely basis. Upon a showing of reasonable cause, one (1) thirty-day extension per quarter shall be granted by the department;

(2) Maintain and make available for the department's inspection any and all records concerning the registrant's conduct of business under its registration, which records shall be maintained for a period of three (3) years after termination of the professional employer agreement;

(3) Notify the department in writing of a change in the information submitted under subdivisions (b)(1)-(7) within thirty (30) days of such change;

(4) Post the registration issued under this chapter in a conspicuous place in the principal place of business and display in clear public view in each registrant's office in this state a notice stating that the professional employer organization is licensed and regulated by the department and that any questions or complaints should be directed to the department; and

(5) Submit a written response to a written inquiry from the department within thirty (30) days of receiving the inquiry.

62-43-107.

(a) The department may establish the following fees by rule:

(1) Initial application fee;

(2) Initial registration fee, which includes a fee for limited registration, as applicable; and

(3) Renewal registration fee.

(b) No fee charged pursuant to this section shall exceed the amount reasonably necessary for the administration of this chapter. All fees collected by this state pursuant to this chapter shall be used by the department to implement and administer this chapter. The fees shall be deposited in a reserve for such purposes and the principal and interest of the reserve shall not revert on June 30 of any year.

(c) Fees under this section shall be:

(1) Remitted with the application or with the hearing request;

(2) Payable to this state; and

(3) Nonrefundable.

62-43-108.

(a)(1) The co-employment relationship shall be based on a written professional employer agreement between the client and the professional employer organization setting forth the responsibilities and duties of each co-employer. The professional employer agreement shall disclose to the client the services to be rendered, including charges and fees, the respective rights and obligations of the parties and provide that the professional employer organization:

(A) Reserves a right of direction and control over covered employees of the client; however, the client may retain sufficient direction and control over covered employees that is necessary to conduct the client's business and without which the client would be unable to conduct its business, discharge any fiduciary responsibility that it may have or comply with any applicable licensure, regulatory or statutory requirement of the client;

(B) Pursuant to this section, assumes responsibility for the payment of wages of its covered employees, its payroll-related taxes and its employee benefits from its own accounts without regard to payments by the client to the professional employer organization; and

(C) Retains a right to hire, terminate and discipline covered employees.

(2) A professional employer organization shall give written notice of the general nature of the relationship between the professional employer organization and the client to each covered employee.

(3) A professional employer organization shall be deemed an employer of its covered employees and shall pay wages to covered employees; withhold, collect, report and remit payroll-related and unemployment taxes; and, to the extent the professional employer organization has assumed responsibility in the professional employer agreement, make payments for employee benefits for covered employees. As used in this section, the term "wages" does not include any obligation between a client and a covered employee for payments beyond or in addition to the covered employee's salary, draw, or regular rate of pay, such as bonuses, commissions, severance pay, deferred compensation, profit sharing or vacation, sick or other paid time off pay, unless the professional employer organization has expressly agreed to assume liability for such payments in the professional employer agreement.

(b) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

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

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

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

(4) A professional employer organization shall not be liable for the acts, errors, or omissions of a client or of any covered employee of the client when such covered employee is acting under the express direction and control of the client;

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

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

(c)(1) A professional employer organization may sponsor and maintain employee benefit and welfare plans for the benefit of its covered employees. Any of those plans that are plans of insurance shall comply with the applicable provisions of the insurance laws of this state. The self-insured plans developed under this section are not subject to premium taxes. The department may promulgate rules regulating self-insured plans under this section.

(2) An applicant or registrant shall disclose to the department, to each client company and to all eligible covered employees the following information relating to any benefit plan of insurance provided for the benefit of its covered employees:

(A) The type of coverage and a copy of the insurance policy or certificate or summary plan description;

(B) The identity of each insurer for each type of coverage;

(C) The amount of benefits for each type of coverage and to whom or on whose behalf benefits will be paid; and

(D) The policy limits on each insurance policy.

(3) Nothing in this subsection (c) shall require a professional employer organization to provide comparable benefits to covered employees located at different clients.

(4) The sale of professional employer services in conformance with this chapter shall not constitute the sale of insurance within the meaning of applicable state law.

62-43-109.

(a) A professional employer organization shall be deemed an employer of its covered employees and shall pay state unemployment premiums as required by the Tennessee Employment Security Law, compiled in Title 50, Chapter 7 and as amended.

(b) A professional employer organization shall keep separate records and submit separate state unemployment insurance wage and premium reports with payments pursuant to Title 50, Chapter 7, Part 4 and as amended, to report the covered employees of each client by using the client's state employer account number as provided for in subsection (c) and using the premium rate based on the aggregate reserve ratio of the professional employer organization as provided in subsection (d).

(c)(1) For each professional employer organization having one (1) or more covered employees with a client in this state, such professional employer organization shall file an application with the chief administrative officer of the division of employment security of the Department of Labor and Workforce Development for an account number for each client having one (1) or more covered employees in this state; provided, the application shall include:

(A) The aggregate state number assigned to the professional employer organization, along with the name, address and phone number of the professional employer organization;

(B) The name, physical address and phone number of the client;

(C) The name of the client's owner, partners, corporate officers, limited liability company members and managers, if board managed, or general partners;

(D) The federal identification number of the client;

(E) The signature of the client's principal or attorney in fact;

(F) A brief description of the client's major business activity, listing any products produced or sold, or service provided; and

(G) Any other information which may be required by the Department of Labor and Workforce Development.

(2) The professional employer organization shall notify the Department of Labor and Workforce Development in writing of any additions or deletions of clients during the quarter in which such changes occur.

(3) All information furnished to the Department of Labor and Workforce Development under this subsection (c) shall be treated as confidential information as provided in § 50-7-701 and as amended.

(d) A professional employer organization shall determine the aggregate reserve ratio of a professional employer organization by using one (1) of the following two (2) methods:

(1)(A) Total all the state unemployment premiums paid on both the state taxable wages of a professional employer organization and on

the state taxable wages of all the clients of such professional employer organization for all years during which the professional employer organization has been subject to Title 50, Chapter 7 and all the years each individual client has been a client of the professional employer organization as of the computation date, as provided in § 50-7-403(k)(1) and as amended;

(B) Subtract therefrom the total of all benefits charged to the aggregate reserve account of the professional employer organization for all years, including the benefits charged resulting from benefits paid to covered employees of each individual client for all the years each client has been a client of the professional employer organization as of the computation date;

(C) Divide the difference determined in subdivision (d)(1)(A)(ii) by the average taxable payroll for the three (3) most recently completed calendar years, ending on the computation date, of the professional employer organization, plus the average taxable payroll of each client for that portion of the three-year period during which such client was a client of the professional employer organization;

(D) The resulting quotient shall be the aggregate reserve ratio of the professional employer organization beginning the July 1 following the computation date; and

(E) The employer premium rate for the professional employer organization shall be determined by matching its aggregate reserve ratio to the appropriate premium rate table pursuant to Title 50, Chapter 7 and as amended; or

(2) In cases where the aggregate reserve account of a professional employer organization has not been chargeable with benefits for thirty-six (36) consecutive months ending on the computation date, the professional employer organization shall be assigned the new employer premium rate based upon the reserve ratio of the professional employer organization's industrial classification as determined pursuant to § 50-7-403(b)(1)(B) and as amended.

(e) A professional employer organization shall not be considered a successor employer, within the meaning of Title 50, Chapter 7 and as amended, to any client and shall not acquire the experience history of any client with whom there is not any common ownership, management or control. The client, upon terminating its relationship with the professional employer organization, shall not be considered a successor employer, within the meaning of Title 50, Chapter 7 and as amended, to the professional employer organization and shall not acquire any portion of the experience history of the aggregate reserve account of the professional employer organization with whom there is not any common ownership, management or control. For purposes of this subsection (e), the existence of professional employer agreement, without other evidence of common control, shall not constitute common ownership, management or control.

(f)(1) A client shall be jointly and severally liable with a professional employer organization for state unemployment premiums for each of the client's covered employees; provided, however, that a client shall be relieved of joint and several liability for state unemployment premiums if the professional employer organization has posted a corporate surety bond, as described in this subsection (f), with the administrator of the division of employment security of the Tennessee Department of Labor and Workforce Development in the amount of one hundred thousand dollars (\$100,000) for so long as the bond remains in force.

(2) The corporate surety bond shall be in form and content approved by the Department of Labor and Workforce Development as evidenced by the department's written consent thereto, and shall be issued by an organization currently licensed and authorized to issue the bond in this state.

(3) The bond shall be conditioned for the benefit of the Department of Labor and Workforce Development, who may enforce the bond to collect unpaid unemployment insurance premiums, interest and penalties owed by

the professional employer organization pursuant to Title 50, Chapter 7, Part 4 and as amended.

(4) Any surety is required to provide the administrator of the division of employment security of the Department of Labor and Workforce Development sixty (60) days' notice of cancellation of the bond.

(5) If after three (3) full calendar years, throughout which a professional employer organization has paid all unemployment insurance premiums due in a timely manner and has a positive unemployment insurance reserve account, the bond may be reduced to an amount no less than thirty-five thousand dollars (\$35,000) as determined and approved by the administrator conditioned upon the total taxable payroll for the previous calendar year and other factors deemed relevant by the administrator.

(6) Any reduced bond shall be subject to review on no less than an annual basis by the administrator, who may adjust the required amount of the bond as is deemed appropriate.

62-43-110.

(a) A professional employer organization shall:

(1) Ensure that its Tennessee covered employees are covered by workers' compensation insurance provided in accordance with Title 50 and the applicable Tennessee insurance laws and regulations as amended;

(2) Notify the department and its clients within ten (10) days of any notice of cancellation of its workers' compensation coverage; and

(3) Notify the department and its workers' compensation carrier, if applicable, of the termination of the professional employer organization's relationship with any client with covered employees in this state.

(b) The professional employer organization shall be entitled along with the client to the exclusivity of the remedy under both the workers' compensation and employer's liability provisions of a workers' compensation policy or plan that either party has secured.

62-43-111.

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

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

(c) 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 co-employed 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 professional employer organization either through payroll or through benefit plans sponsored by the professional employer organization shall be credited against the client's obligation to fulfill such mandates.

(d) 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 purpose of computing the tax.

(e) Except to the extent provided otherwise in the professional employer agreement with a client, a professional employer organization is not liable for the general debts, obligations, loss of profits, business goodwill or other consequential special or incidental damages of a client with which it has entered into a professional employer agreement.

(f) This section applies to this state and local governmental entities.

62-43-112.

(a) No person shall:

(1) Submit false information to the department;

(2) Make a materially false entry in the records of a professional employer organization; or

(3) Violate this chapter.

(b) The following constitute grounds for which the department may take action under subsection (c) against a person subject to this chapter:

(1) Being convicted of an offence or disciplined as described in § 62-43-106(b)(7);

(2) Committing a prohibited act under subsection (a);

(3) Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, advertisement, sales presentation, omission or comparison that misrepresents the benefits, advantages, conditions or terms of any professional employer services or is otherwise untrue, deceptive or misleading;

(4) Entering into any agreement to commit or, by any concerted action, committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of employee leasing; or

(5) Permitting to be used or using, permitting to be filed or filing, any name, trade name, fictitious name or business identity which is the same as, similar to or may be confused with the name, trade name, fictitious name or business identity of an existing licensee, any governmental agency or any nonprofit organization.

(c) For violating subsection (a) or when grounds exist under subsection (b), the department may:

(1) Issue an order:

(A) To comply with the chapter; or

(B) To cease and desist;

(2) Impose an administrative penalty not to exceed one thousand dollars (\$1,000) for each set of facts constituting a separate violation;

(3) Restrict or suspend a registration;

(4) Place the registrant on probation for a period of time not to exceed the next full term of registration where the registrant is subject to the terms and conditions determined by the department;

(5) Deny an application or revoke a registration; or

(6) Enjoin or restrain by bringing an action in the Chancery Court of Davidson County.

(d) If the department finds that a violation has occurred or that grounds exist to take an action under subsection (c), the department shall consider the following when determining what action to take:

(1) Whether the person committing the act or failing to act did so:

(A) Knowingly;

(B) Recklessly;

(C) Repeatedly; or

(D) Relying on information of another person or was subject to an illegal act;

(2) The materiality and severity of the violation; and

(3) The person's actions to cure the violation.

(e) If the action under subdivision (c)(5) is taken by the department:

(1) The department shall notify:

(A) The Department of Labor and Workforce Development; and

(B) Each client of which the department has knowledge of the department's action; and

(2) The person with a revoked registration shall:

(A) Immediately cease soliciting clients for professional employer services;

(B) Not execute additional professional employer agreements or enter into any arrangement wherein it agrees to provide professional employer services;

(C) Wind down the operations of the professional employer organization so that the professional employer organization will no longer be in operation sixty (60) days after the effective date of the revocation; and

(D) Return the registration that was revoked to the department.

(f)(1) The department may make or cause to be made investigations, audits or reviews within or without this state as the department deems necessary:

(A) To determine whether a person has violated or is in danger of violating this chapter, including any regulation or rule promulgated under this chapter; or

(B) To aid in the enforcement of this chapter.

(2) All material compiled by the department in any investigation, audit or review under this section shall be confidential and exempt from public disclosure pursuant to Title 10, Chapter 7 and as amended, until ten (10) days after a finding of probable cause resulting from the investigation, audit or review; however, financial information, including, but not limited to, client lists, obtained by the department in connection with investigations, audits or reviews shall be kept confidential and exempt from the public disclosure requirements of Title 10, Chapter 7.

(3) The department may impose upon the person found to have violated this chapter the cost of investigation and prosecution, including reasonable attorney fees.

(g) The Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 and as amended, governs all matters and procedures regarding the hearing and judicial review of any contested case arising under this chapter.

62-43-113. The provisions of this chapter are severable. If any provision of this chapter or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

62-43-114.

(a) Rules promulgated pursuant to the "Tennessee Employee Leasing Act", that are in effect prior to enactment of this act, shall remain in effect unless such rules are in conflict with this chapter or until modified or repealed by the department.

(b) A plan, adopted by a study committee establishing criteria for a staff leasing company sponsoring and maintaining a plan for self-insurance for health benefits on or before January 1, 1998, shall be deemed a rule of the department and shall remain in effect unless such rule is in conflict with this chapter or until modified or repealed by the department.

(c) A current license in effect at the effective date of this act shall remain in effect until one hundred eighty (180) days after the close of the licensee's current fiscal year.

(d) The most recent appointments to the advisory board under the Tennessee Employee Leasing Act shall be considered appointments to the advisory council unless the governor appoints a successor to an expired term.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 56, is amended by deleting the chapter in its entirety and by substituting instead the following language:

56-56-101. As used in this chapter, "professional employer organization benefit and welfare plan" means a plan offered to the covered employees of a professional employer organization registered pursuant to the Tennessee Professional Employer Organization Act, compiled in Title 62, Chapter 43 and as amended.

56-56-102. A professional employer organization may sponsor and maintain employee benefit and welfare plans in accordance with § 62-43-108(c), for the benefit of covered employees. The self-insured plans developed under this section are not subject to the premium taxes imposed by this title. The department may promulgate rules regulating self-insured plans under this section.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 2633

PASSED: April 30, 2012

  
\_\_\_\_\_  
RON RAMSEY  
SPEAKER OF THE SENATE

  
\_\_\_\_\_  
BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 21<sup>st</sup> day of May 2012

  
\_\_\_\_\_  
BILL HASLAM, GOVERNOR