

As Amended by Senate Committee

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2790

By Committee on Commerce, Labor and Economic Development

Requested by Scott Schneider on behalf of the National Association of Professional Employer Organizations

2-9

1 AN ACT concerning labor and employment; relating to professional
2 employer organizations; transferring registration requirements, related
3 compliance oversight and enforcement authority for such organizations
4 from the commissioner of insurance to the secretary of ~~labor~~ **state,**
5 **effective ~~March~~ January 1, 2025;** requiring the filing of initial and
6 renewal registration applications, reports, financial statements and other
7 assurance documents with the secretary; providing for fees to be
8 submitted to the secretary and granting the secretary responsibility over
9 the professional employer organization fee fund; ensuring that welfare
10 benefit plans offered by professional employer organizations to
11 employees and covered employees are treated as a single employer
12 welfare benefit plan for purposes of state law; amending K.S.A. 44-
13 1702, 44-1704, 44-1705, 44-1706, 44-1708, 44-1709 and 44-1710 and
14 repealing the existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. **On ~~March~~ January 1, 2025,** K.S.A. 44-1702 is hereby
18 amended to read as follows: 44-1702. As used in K.S.A. 44-1701 through
19 44-1711, and amendments thereto:

20 (a) "Client" means any person who enters into a professional
21 employer agreement with a professional employer organization.

22 (b) "Co-employer" means either a professional employer organization
23 or a client.

24 (c) "Co-employment relationship" means a relationship which is
25 intended to be an ongoing relationship rather than a temporary or project
26 specific relationship, and wherein the rights, duties and obligations of an
27 employer which arise out of an employment relationship have been
28 allocated between the employer and a professional employer organization
29 as co-employers pursuant to a professional employer agreement entered
30 into in accordance with the provisions of K.S.A. 44-1701 through 44-1711,
31 and amendments thereto. Under a co-employment relationship:

32 (1) The professional employer organization is entitled to enforce only

1 those employer rights, and is subject to only those employer obligations,
2 that are specifically allocated to the professional employer organization by
3 the professional employer agreement or by the provisions of K.S.A. 44-
4 1701 through 44-1711, and amendments thereto;

5 (2) the client is entitled to enforce those employer rights, and is
6 obligated to provide and perform those employer obligations, that are
7 allocated to such client by the professional employer agreement or by the
8 provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto;
9 and

10 (3) the client also is entitled to enforce any employer right, and is
11 obligated to perform any obligation of an employer, that is not specifically
12 allocated to the professional employer organization by the professional
13 employer agreement or by the provisions of K.S.A. 44-1701 through 44-
14 1711, and amendments thereto.

15 ~~(d) "Commissioner" means the commissioner of insurance.~~

16 ~~(e)~~ (1) "Covered employee" means an individual having a co-
17 employment relationship with a professional employer organization and a
18 client, who has received written notice of the co-employment relationship
19 with the professional employer organization and the client, and such co-
20 employment relationship was entered into pursuant to a professional
21 employer agreement entered into in accordance with the provisions of
22 K.S.A. 44-1701 through 44-1711, and amendments thereto.

23 (2) The term "covered employee" shall include individuals who are
24 officers, directors, shareholders, partners or managers of the client, or
25 members of a limited liability company that is a client, if:

26 (A) The professional employer organization and the client have
27 expressly agreed in the professional employer agreement that such
28 individuals are covered employees;

29 (B) such individuals satisfy the provisions of paragraph (1); and

30 (C) such individuals act as operational managers or perform day-to-
31 day operational services for the client.

32 ~~(f) "Department" means the department of insurance.~~

33 ~~(g)~~(e) "Person" means any individual, partnership, corporation,
34 limited liability company, association or any other form of legally
35 recognized entity.

36 ~~(h)~~(f) "Professional employer agreement" means a written contract
37 entered into between a client and a professional employer organization that
38 provides:

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

40 (2) for the allocation of employer rights and obligations between the
41 client and the professional employer organization with respect to covered
42 employees; and

43 (3) for the professional employer organization and the client to

1 assume the responsibilities required by the provisions of K.S.A. 44-1701
2 through 44-1711, and amendments thereto.

3 ~~(f)~~(g) (1) "Professional employer organization" means any person
4 engaged in the business of providing professional employer services. A
5 person engaged in the business of providing professional employer
6 services shall be considered a "professional employer organization"
7 regardless of such person's use of the term staff leasing company,
8 administrative employer, employee leasing company or any name other
9 than professional employer organization in describing such person's
10 business.

11 (2) For purposes of K.S.A. 44-1701 through 44-1711, and
12 amendments thereto, the following shall not be considered a "professional
13 employer organization," or as providing "professional employment
14 services":

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

20 (B) independent contractor arrangements by which a person assumes
21 responsibility for the product produced or service performed by such
22 person or such person's agents and retains and exercises primary direction
23 and control over the work performed by the individuals whose services are
24 supplied under such arrangements; and

25 (C) providing temporary help services.

26 ~~(f)~~(h) "Professional employer group" means two or more professional
27 employer organizations that are majority owned or commonly controlled
28 by the same entity, parent or controlling person.

29 ~~(k)~~(i) "Professional employer services" means the service of entering
30 into co-employment relationships.

31 ~~(h)~~(j) "Registrant" means a professional employer organization
32 registered under the provisions of K.S.A. 44-1701 through 44-1711, and
33 amendments thereto.

34 (k) "*Secretary*" means the secretary of state.

35 ~~(m)~~(l) "Temporary help services" means services consisting of a
36 person:

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

38 (2) locating other organizations that need the services of such
39 employees;

40 (3) assigning such employees:

41 (A) To perform work at or services for such other organizations to
42 support or supplement such other organizations' workforces;

43 (B) to provide assistance in special work situations, including

- 1 employee absences, skill shortages or seasonal workloads; or
2 (C) to perform special assignments or projects; and
3 (4) customarily attempting to reassign such employees to other
4 organizations when such employees finish an assignment.
- 5 ~~(n)~~(m) "Working capital" means current assets less current liabilities,
6 as such terms are used by generally accepted accounting principles.
- 7 Sec. 2. ~~On March~~ **January 1, 2025**, K.S.A. 44-1704 is hereby
8 amended to read as follows: 44-1704. (a) A person engaged in the business
9 of providing professional employer services pursuant to co-employment
10 relationships in which all or a majority of the employees of a client are
11 covered employees shall be registered pursuant to this section.
- 12 (b) A person who is not registered pursuant to this section shall not
13 offer or provide professional employer services in this state, and shall not
14 use the names PEO, professional employer organization, staff leasing
15 company, employee leasing company, administrative employer or any
16 other name or title representing professional employer services.
- 17 (c) Each applicant for registration shall submit an application to the
18 ~~commissioner~~ *secretary* in such form and manner as prescribed by the
19 ~~commissioner~~ *secretary*. The application shall contain the following
20 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 professional
29 employer organization has operated in the preceding five years, including
30 any alternative names, names of predecessors and, if known, successor
31 business entities;
- 32 (5) a statement of ownership that shall include the name and evidence
33 of the business experience of any person that, individually, or acting in
34 concert with one or more other persons, owns or controls, directly or
35 indirectly, 15% or more of the equity interest of the professional employer
36 organization;
- 37 (6) a statement of management that 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 that
43 shall comply with the provisions of subsection (h).

1 ~~(d)(1) Each professional employer organization operating within this~~
2 ~~state as of the effective date of this act shall complete its initial registration~~
3 ~~not later than 60 days after the effective date of this act. Such initial~~
4 ~~registration shall be valid until 60 days from the end of the professional~~
5 ~~employer organization's first fiscal year that is more than one year after the~~
6 ~~effective date of this act.~~

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

23 (e) A registrant's application shall automatically expire 120 days after
24 the end of the registrant's fiscal year. Within 120 days after the end of a
25 registrant's fiscal year, such registrant shall renew its registration by
26 notifying the ~~commissioner~~ *secretary* of any changes in the information
27 provided in such registrant's most recent registration or renewal. A
28 registrant's existing registration shall remain in effect for the period of time
29 the renewal application is pending.

30 (f) Professional employer organizations in a professional employer
31 group may satisfy any reporting and financial requirements of this section
32 on a combined or consolidated basis, provided that each member of the
33 professional employer group guarantees the financial capacity obligations
34 required by K.S.A. 44-1706, and amendments thereto, of each other
35 member of the professional employer group. In the case of a professional
36 employer group that submits a combined or consolidated audited financial
37 statement, including entities that are not professional employer
38 organizations or that are not in the professional employer group, the
39 controlling entity of the professional employer group under the
40 consolidated or combined statement must guarantee the obligations of the
41 professional employer organizations in the professional employer group.

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

1 (A) Submits a written request for limited registration in such form
2 and manner as prescribed by the ~~commissioner~~ *secretary*;

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

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

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

9 (2) A limited registration is valid for one year and may be renewed
10 thereafter.

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

16 (4) The provisions of K.S.A. 44-1706, and amendments thereto, shall
17 not apply to applicants for limited registration.

18 (h) At the time of initial registration, the applicant shall submit the
19 most recent audit of the applicant or such applicant's parent holding
20 company. The most recent audit shall not be older than 13 months.
21 Thereafter, a professional employer organization or professional employer
22 group shall file on an annual basis, within 120 days after the end of the
23 professional employer organization's or parent holding company's fiscal
24 year, a succeeding audit and renewal registration application. An applicant
25 may apply to the ~~commissioner~~ *secretary* for an extension of time to
26 submit such audit, but any such request shall be accompanied by a letter
27 from the auditor stating the reasons for the delay and the anticipated audit
28 completion date. For the initial application, if the closing date of the
29 audited financial statements required by this section is older than three
30 months from the date of the application, the application also shall include
31 updated, unaudited financial statements for the most recent quarter. The
32 financial statement shall be prepared in accordance with generally
33 accepted accounting principles and audited by an independent certified
34 public accountant licensed to practice in the jurisdiction in which such
35 accountant is located and shall be without qualification as to the going
36 concern status of the professional employer organization. A professional
37 employer group may submit combined or consolidated audited financial
38 statements to meet the requirements of this section. A professional
39 employer organization that has not had sufficient operating history to have
40 audited financial statements based upon at least 12 months of operating
41 history shall meet the financial capacity requirements of subsection (f) and
42 present financial statements reviewed by a certified public accountant.

43 (i) The ~~department~~ *secretary* shall maintain a list of professional

1 employer organizations registered under this section, and such list shall be
2 readily available to the public by electronic or other means.

3 (j) The ~~commissioner~~ *secretary*, to the extent feasible, shall permit the
4 acceptance of electronic filings, including *initial registration and renewal*
5 *applications, documents, reports and other filings* required by the
6 ~~commissioner~~ *secretary* under this section. The ~~commissioner~~ *secretary*
7 may provide for the acceptance of electronic filings and ~~other assurance~~
8 ~~documents~~ *registration information for initial registration and renewal*
9 *applications, reports and other assurance documents* by an independent
10 and qualified ~~entity~~ *assurance organization* approved by the ~~commissioner~~
11 *secretary* that provides satisfactory assurance of compliance acceptable to
12 the ~~commissioner~~ *secretary* consistent with, or in lieu of, the requirements
13 of this section and K.S.A. 44-1706, and amendments thereto. The
14 ~~commissioner~~ *secretary* shall permit a professional employer organization
15 to authorize such ~~entity~~ *assurance organization* approved by the
16 ~~commissioner~~ *secretary* to act on the professional employer organization's
17 behalf, including electronic filings *and provisions of registration*
18 *information for initial registration and renewal applications* and payment
19 of registration fees in complying with the registration requirements of ~~this~~
20 ~~section~~ *subsections (c) through (h)*. Use of such an approved ~~entity~~
21 *assurance organization* shall be optional and not mandatory for a
22 registrant. Nothing in this subsection shall limit or change the
23 ~~commissioner's~~ *secretary's* authority to register or terminate registration of
24 a professional employer organization or to investigate or enforce any
25 provision of K.S.A. 44-1701 through 44-1711, and amendments thereto.

26 Sec. 3. ~~On March~~ **January 1, 2025**, K.S.A. 44-1705 is hereby
27 amended to read as follows: 44-1705. (a) Upon filing an initial application
28 for registration, a professional employer organization shall pay a fee in an
29 amount not to exceed \$1,000.

30 (b) Upon filing a renewal application for registration, a professional
31 employer organization shall pay a fee in an amount not to 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 ~~commissioner~~ *secretary* and adopted by rules and regulations.

38 (e) The ~~commissioner~~ *secretary* shall adopt rules and regulations
39 establishing the fees to be charged pursuant to this section in such amounts
40 as deemed reasonably necessary by the ~~commissioner~~ *secretary* for the
41 administration of the provisions of K.S.A. 44-1701 through 44-1711, and
42 amendments thereto, subject to the limitations on fee amounts set forth in
43 subsections (a), (b) and (c).

1 (f) There is hereby created the professional employer organization fee
2 fund. The ~~commissioner~~ *secretary* shall remit all moneys received from
3 fees or penalties to the state treasurer in accordance with the provisions of
4 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
5 remittance, the state treasurer shall deposit the entire amount in the state
6 treasury to the credit of the professional employer organization fee fund.
7 All expenditures from the professional employer organization fee fund
8 shall be for the purposes of the administration of the provisions of K.S.A.
9 44-1701 through 44-1711, and amendments thereto, and shall be made in
10 accordance with appropriation acts upon warrants of the director of
11 accounts and reports issued pursuant to vouchers approved by the
12 ~~commissioner~~ *secretary*, or the ~~commissioner's~~ *secretary's* designee.

13 Sec. 4. ~~On March~~ **January 1, 2025**, K.S.A. 44-1706 is hereby
14 amended to read as follows: 44-1706. Except as provided by ~~subsections~~
15 ~~(g) and (j)~~ of K.S.A. 44-1704 ~~(g) and (j)~~, and amendments thereto, each
16 professional employer organization, or collectively each professional
17 employer group shall either:

18 (a) Maintain positive working capital upon registration as reflected in
19 the financial statements submitted to the ~~commissioner~~ *secretary* with the
20 initial registration application and each renewal application; or

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

34 Sec. 5. K.S.A. 44-1708 is hereby amended to read as follows: 44-
35 1708. A client and a professional employer organization shall each be
36 deemed an employer under the laws of this state for purposes of
37 sponsoring retirement and employee welfare benefit plans for its covered
38 employees. *A fully-insured welfare benefit plan offered by a professional*
39 *employer organization to its employees and covered employees shall be*
40 *treated under the laws of this state as a single employer welfare benefit*
41 *plan.*

42 Sec. 6. ~~On March~~ **January 1, 2025**, K.S.A. 44-1709 is hereby
43 amended to read as follows: 44-1709. (a) It shall be a violation of the

1 provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto:

2 (1) For a person to knowingly offer or provide professional employer
3 services or use the names PEO, professional employer organization, staff
4 leasing, employee leasing, administrative employer or other title
5 representing professional employer services without registering in
6 accordance with K.S.A. 44-1704, and amendments thereto;

7 (2) for a person to knowingly provide false or fraudulent information
8 to the ~~commissioner~~ *secretary* in conjunction with any registration
9 application, renewal or in any report required under the provisions of
10 K.S.A. 44-1704 or 44-1706, and amendments thereto;

11 (3) for a person to knowingly make a material misrepresentation to
12 the ~~commissioner~~ *secretary*, or other governmental agency to which such
13 person is required to submit a report or information;

14 (4) for a professional employer organization or a controlling person
15 of a professional employer organization to be convicted of a crime:

16 (A) That relates to the operation of a professional employer
17 organization;

18 (B) that relates to the ability of the professional employer
19 organization or a controlling person of a professional employer
20 organization to operate a professional employer organization; or

21 (C) pursuant to 18 U.S.C. § 1033; or

22 (5) for a person to willfully violate any provision of K.S.A. 44-1701
23 through 44-1711, and amendments thereto, or any rule or regulation
24 adopted by the ~~commissioner~~ *secretary* pursuant thereto.

25 (b) Upon a finding, and after notice and an opportunity for a hearing,
26 that a professional employer organization, or a controlling person of a
27 professional employer organization, or a person offering professional
28 employer services has committed a violation under this section, the
29 ~~commissioner~~ *secretary* may:

30 (1) Deny the application for registration;

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

32 (3) impose a civil fine in an amount not to exceed \$10,000 for each
33 material violation of the provisions of K.S.A. 44-1701 through 44-1711,
34 and amendments thereto;

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

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

39 (c) The provisions of this section shall be subject to the Kansas
40 judicial review act.

41 Sec. 7. ~~On March~~ **January 1, 2025**, K.S.A. 44-1710 is hereby
42 amended to read as follows: 44-1710. The ~~commissioner~~ *secretary* is
43 hereby authorized to and shall adopt such rules and regulations as the

1 ~~commissioner~~ *secretary* deems necessary to implement and enforce the
2 provisions of K.S.A. 44-1701 through 44-1711, and amendments thereto.

3 Sec. 8. K.S.A. ~~44-1702, 44-1704, 44-1705, 44-1706, 44-1708, 44-~~
4 ~~1709 and 44-1710~~ ~~are~~ **is** hereby repealed.

5 **Sec. 9. On ~~March~~ January 1, 2025, K.S.A. 44-1702, 44-1704, 44-**
6 **1705, 44-1706, 44-1709 and 44-1710 are hereby repealed.**

7 ~~Sec. 9: 10.~~ This act shall take effect and be in force from and after its
8 publication in the statute book.