

SECOND REGULAR SESSION  
[ P E R F E C T E D ]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 600**  
99TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR SCHATZ.

Offered February 27, 2018.

Senate Substitute adopted, February 27, 2018.

Taken up for Perfection February 27, 2018. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

4505S.07P

---

---

**AN ACT**

To amend chapter 285, RSMo, by adding thereto nine new sections relating to professional employer organizations, with penalty provisions.

---

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 285, RSMo, is amended by adding thereto nine new sections, to be known as sections 285.700, 285.705, 285.710, 285.715, 285.720, 285.725, 285.730, 285.740, and 285.750, to read as follows:

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

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

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

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

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

**(3) "Coemployment relationship", a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer**

11 agreement and sections 285.700 to 285.750. In such a coemployment  
12 relationship:

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

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

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

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

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

28 (b) The individual's coemployment relationship is pursuant to a  
29 professional employer agreement subject to sections 285.700 to 285.750.  
30 Individuals who are officers, directors, shareholders, partners, and  
31 managers of the client will be covered employees, except to the extent  
32 the PEO and the client have expressly agreed in the professional  
33 employer agreement that such individuals would not be covered  
34 employees, provided such individuals meet the criteria of this  
35 subdivision and act as operational managers or perform day-to-day  
36 operational services for the client;

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

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

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

45 (a) For the coemployment of covered employees;

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

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

50 (8) "Professional employer organization" or "PEO", any person  
51 engaged in the business of providing professional employer services. A  
52 person engaged in the business of providing professional employer  
53 services shall be subject to registration and regulation under sections  
54 285.700 to 285.750 regardless of its use of the term or conducting  
55 business as a professional employer organization, staff leasing  
56 company, registered staff leasing company, employee leasing company,  
57 administrative employer, or any other name. The following shall not  
58 be deemed to be professional employer organizations or the providing  
59 of professional employment services for the purposes of sections  
60 285.700 to 285.750:

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

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

71 (c) Providing temporary help services;

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

76 (10) "Registrant", a PEO registered under sections 285.700 to  
77 285.750;

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

79 (a) Recruiting and hiring its own employees;

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

82 (c) Assigning those employees to perform work at or services for  
83 the other organizations to support or supplement the other  
84 organizations' workforces, or to provide assistance in special work

85 situations including, but not limited to, employee absences, skill  
86 shortages, seasonal workloads, or to perform special assignments or  
87 projects; and

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

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

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

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

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

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

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

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

32 5. A PEO shall not be deemed to engage in any occupation, trade,

33 profession, or other activity that is subject to licensing, registration, or  
34 certification requirements, or is otherwise regulated by a governmental  
35 entity solely by entering into and maintaining a coemployment  
36 relationship with a covered employee who is subject to such  
37 requirements or regulation.

38 6. A client shall have the sole right of direction and control of  
39 the 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.

44 7. For purposes of the determination of tax credits, economic  
45 incentives, or other benefits provided by this state or any other  
46 government entity and based on employment, covered employees shall  
47 be deemed employees solely of the client. A client shall be entitled to  
48 the benefit of any tax credit, economic incentive, or other benefit  
49 arising as the result of the employment of covered employees of such  
50 client. Notwithstanding that the PEO is the W-2 reporting employer,  
51 the client shall continue to qualify for such benefit, incentive, or credit.  
52 If the grant or amount of any such benefit, incentive, or credit is based  
53 on the number of employees, then each client shall be treated as  
54 employing only those covered employees coemployed by the  
55 client. Covered employees working for other clients of the PEO shall  
56 not be counted. Each PEO shall provide, upon request by a client or an  
57 agency or department of this state, employment information reasonably  
58 required by any agency or department of this state responsible for  
59 administration of any such tax credit, economic incentive, or other  
60 benefit that is necessary to support any request, claim, application, or  
61 other action by a client seeking any such tax credit, economic  
62 incentive, or other benefit.

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

285.715. 1. Except as otherwise provided in sections 285.700 to

2 285.750, no person shall provide, advertise, or otherwise hold itself out  
3 as providing professional employer services in this state, unless such  
4 person is registered under sections 285.700 to 285.750.

5 2. Each applicant for registration under sections 285.700 to  
6 285.750 shall provide the secretary of state with the following  
7 information:

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

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

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

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

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

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

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

39 statements to meet the requirements of this section. A PEO that has  
40 not had sufficient operating history to have audited financials based  
41 upon at least twelve months of operating history shall meet the  
42 financial capacity requirements of sections 285.700 to 285.750 and  
43 present financial statements reviewed by a certified public accountant.

44       **3. (1) Each PEO operating within this state as of the effective**  
45 **date of sections 285.700 to 285.750 shall complete its initial registration**  
46 **not later than one hundred eighty days after the effective date of**  
47 **sections 285.700 to 285.750. Such initial registration shall be valid until**  
48 **one hundred eighty days from the end of the PEO's first fiscal year that**  
49 **is more than one year after the effective date of sections 285.700 to**  
50 **285.750.**

51       **(2) Each PEO not operating within this state as of the effective**  
52 **date of sections 285.700 to 285.750 shall complete its initial registration**  
53 **prior to initiating operations within this state. In the event a PEO not**  
54 **registered in this state becomes aware that an existing client not based**  
55 **in this state has employees and operations in this state, the PEO shall**  
56 **either decline to provide PEO services for those employees or notify the**  
57 **secretary of state within five business days of its knowledge of this fact**  
58 **and file a limited registration application under subsection 6 of this**  
59 **section or a full business registration if there are more than fifty**  
60 **covered employees. The secretary of state may issue an interim**  
61 **operating permit for the period the registration applications are**  
62 **pending if the PEO is currently registered or licensed by another state**  
63 **and the secretary of state determines it to be in the best interest of the**  
64 **potential covered employees.**

65       **4. Within one hundred eighty days after the end of a**  
66 **registration's fiscal year, such registrant shall renew its registration by**  
67 **notifying the secretary of state of any changes in the information**  
68 **provided in such registration's most recent registration or renewal. A**  
69 **registrant's existing registration shall remain in effect during the**  
70 **pendency of a renewal application.**

71       **5. PEOs in a PEO group may satisfy the reporting and financial**  
72 **requirements of sections 285.700 to 285.750 on a combined or**  
73 **consolidated basis, provided that each member of the PEO group**  
74 **guarantees the financial capacity obligations under sections 285.700 to**  
75 **285.750 of each other member of the PEO group. In the case of a PEO**

76 or PEO group that submits a combined or consolidated audited  
77 financial statement including entities that are not PEOs or that are not  
78 in the PEO group, the controlling entity of the PEO group under the  
79 consolidated or combined statement shall guarantee the obligations of  
80 the PEOs in the PEO group.

81       6. (1) A PEO is eligible for a limited registration under sections  
82 285.700 to 285.750 if such PEO:

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

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

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

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

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

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

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

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

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

103       9. The secretary of state shall, to the extent practical, permit the  
104 acceptance of electronic filings in conformance with sections 432.200  
105 to 432.295, including applications, documents, reports, and other filings  
106 required by sections 285.700 to 285.750. The secretary of state may  
107 provide for the acceptance of electronic filings and other assurance by  
108 an independent and qualified assurance organization approved by the  
109 secretary of state that provides satisfactory assurance of compliance  
110 acceptable to the secretary of state consistent with or in lieu of the  
111 requirements of sections 285.715 and 285.725 and other requirements  
112 of sections 285.700 to 285.750. The secretary of state shall permit a PEO

113 to authorize such an approved assurance organization to act on the  
114 PEO's behalf in complying with the registration requirements of  
115 sections 285.700 to 285.750, including electronic filings of information  
116 and payment of registration fees. Use of such an approved assurance  
117 organization shall be optional and not mandatory for a  
118 registrant. Nothing in this subsection shall limit or change the  
119 secretary of state's authority to register or terminate registration of a  
120 professional employer organization or to investigate or enforce any  
121 provision of sections 285.700 to 285.750.

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

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

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

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

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

13 5. No fee charged under sections 285.700 to 285.750 shall exceed  
14 the amount reasonably necessary for the administration of sections  
15 285.700 to 285.750.

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

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

7 (2) A PEO or PEO group that does not have positive working  
8 capital may provide a bond, irrevocable letter of credit, or securities

9 with a minimum market value equaling the deficiency plus one  
10 hundred thousand dollars to the secretary of state. Such bond is to be  
11 held by a depository designated by the secretary of state securing  
12 payment by the PEO of all taxes, wages, benefits, or other entitlement  
13 due to or with respect to covered employees if the PEO does not make  
14 such payments when due.

285.730. 1. Except as specifically provided in sections 285.700 to  
2 285.750 or in the professional employer agreement, in each  
3 coemployment relationship:

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

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

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

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

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

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

29 (a) Pay wages to covered employees;

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

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

35 As used in this section, the term "wages" does 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  
38 regular rate of pay, such as bonuses, commissions, severance pay,  
39 deferred compensation, profit sharing, vacation, sick, or other paid-  
40 time off pay, unless the PEO has expressly agreed to assume liability  
41 for such payments in the professional employer agreement; and

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

47           3. With respect to each professional employer agreement entered  
48 into by a PEO, such PEO shall provide written notice to each covered  
49 employee affected by such agreement of the general nature of the  
50 coemployment relationship between and among the PEO, the client, and  
51 such covered employee.

52           4. Except to the extent otherwise expressly provided by the  
53 applicable professional employer agreement:

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

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

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

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

69 client;

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

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

81 5. A PEO under sections 285.700 to 285.750 is not engaged in the  
82 sale of insurance or in acting as a third party administrator by  
83 offering, marketing, selling, administering, or providing professional  
84 employer services that include services and employee benefit plans for  
85 covered employees. The provisions of this section shall not supercede  
86 or preempt any requirements under section 375.014.

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

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

98 (2) Any tax assessed or assessment or mandated expenditure on  
99 a per capita or per employee basis shall be assessed against the client  
100 for covered employees and against the professional employer  
101 organization for its employees who are not covered employees  
102 coemployed with a client. Benefits or monetary consideration that  
103 meet the requirements of mandates imposed on a client and that are  
104 received by covered employees through the PEO either through payroll  
105 or through benefit plans sponsored by the PEO shall be credited

106 against the client's obligation to fulfill such mandates; and

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

285.740. 1. The responsibility to obtain workers' compensation  
2 coverage for covered employees in compliance with all applicable laws  
3 shall be specifically allocated in the professional employer agreement  
4 to either the client or the PEO.

5 2. (1) Coverage for both the directly employed workers of a  
6 client and the covered employees of that client shall be all in the  
7 residual or all in the voluntary market with the same carrier.

8 (2) Workers' compensation coverage for covered employees in the  
9 voluntary market may be obtained by either:

10 (a) The client through a standard workers' compensation policy  
11 or through duly authorized self-insurance under section 287.280; or

12 (b) The PEO through duly authorized self insurance under  
13 section 287.280, through the type of policy referenced under the  
14 provisions of 20 CSR 500-6.800(5)(c)2 issued to the PEO by a carrier  
15 authorized to do business in this state, or through a multiple  
16 coordinated workers' compensation policy issued by a carrier  
17 authorized to do business in this state in the name of the PEO or the  
18 client.

19 A PEO authorized to self-insure under section 287.280 shall report to  
20 the insurer or the appropriate state and rating authorities such  
21 client-based information as is necessary to maintain the client's  
22 experience rating.

23 (3) Workers' compensation for covered employees in the residual  
24 market may be obtained by the client through a residual market policy  
25 or by the PEO through a multiple coordinated policy in either the name  
26 of the PEO or the client that provides to the appropriate state and  
27 rating authorities the client-based information satisfactory to maintain  
28 the client's experience rating.

29 3. A PEO that applies for coverage or is covered through the  
30 voluntary market shall also maintain and furnish to the insurer  
31 sufficient information to permit the calculation of an experience

32 **modification factor for each client upon termination of the**  
33 **coemployment relationship. Information reported during the term of**  
34 **the coemployment relationship which is used to calculate an experience**  
35 **modification factor for a client prior to and upon termination of the**  
36 **professional employer agreement shall continue to be used in the future**  
37 **experience ratings of the PEO. Such information shall include:**

- 38 (1) **The client's corporate name;**
- 39 (2) **The client's taxpayer or employer identification number;**
- 40 (3) **Payroll summaries and class codes applicable to each client,**  
41 **and, if requested by the insurer, a listing of all covered employees**  
42 **associated with a given client; and**
- 43 (4) **Claims information grouped by client, and any other**  
44 **information maintained by or readily available to the PEO that is**  
45 **necessary for the calculation of an experience modification factor for**  
46 **each client.**

47 **4. In addition to any other provision of chapter 287, any material**  
48 **violations of this section by a PEO is grounds for cancellation or**  
49 **nonrenewal of the PEO's insurance policy by the insurer. If a PEO has**  
50 **received notice that its workers' compensation insurance policy will be**  
51 **canceled or nonrenewed, the PEO shall notify by certified mail, within**  
52 **ten days after the receipt of the notice, all of the clients for which there**  
53 **is a coemployment relationship covered under the policy to be**  
54 **canceled, provided that notice shall not be required if the PEO has**  
55 **obtained another insurance policy from a carrier authorized to do**  
56 **business in this state, with an effective date that is the same as the date**  
57 **of cancellation or nonrenewal.**

58 **5. If the coemployment relationship with a client is terminated,**  
59 **the client shall utilize an experience modification factor which reflects**  
60 **its individual experience, including, if applicable, experience incurred**  
61 **for covered employees under the professional employer agreement. The**  
62 **PEO shall provide to the client the client's information that is**  
63 **maintained under subsection 3 of this section within five business days**  
64 **of receiving notice from the client or within five business days of**  
65 **providing notice to the client that the coemployment relationship will**  
66 **terminate. The PEO shall also provide such information to any future**  
67 **client insurer, if requested by such client. The PEO shall notify the**  
68 **insurer of its intent to terminate any client relationship prior to**

69 termination when feasible. When prior notice is not feasible, the PEO  
70 shall notify its insurer within five business days following actual  
71 termination.

72         **6. Both the client and the PEO shall be considered the employer**  
73 **for purposes of coverage under chapter 287. The protection of the**  
74 **exclusive remedy provision under section 287.120 shall apply to the**  
75 **PEO, the client, and to all covered employees and other employees of**  
76 **the client irrespective of which coemployer obtains such workers'**  
77 **compensation coverage. Nothing in this section shall be construed to**  
78 **exempt either the client or the PEO from compliance with the**  
79 **provisions of chapter 287.**

80         **7. A client may request the information maintained under**  
81 **subsection 3 of this section at any time and every PEO shall provide**  
82 **that information to such client within five business days of receiving**  
83 **such a request.**

84         **8. In the case of a request for information by a third party**  
85 **requesting verification of a client's experience modification factor for**  
86 **a client in the type of policy referenced under the provisions of 20 CSR**  
87 **500-6.800(5)(c)2, the PEO shall, within five business days of receipt of**  
88 **receiving the client's consent, provide such third party with only the**  
89 **information maintained by the PEO under subsection 3 of this section.**  
90 **If a client refuses to grant consent to a request for information under**  
91 **this subsection, the PEO shall notify the requesting third party that the**  
92 **client has refused to consent to the disclosure of the information**  
93 **maintained by the PEO under subsection 3 of this section.**

94         **9. A client shall provide any prospective insurer with the**  
95 **information maintained by the PEO under subsection 3 of this section**  
96 **upon receiving such information from the PEO. Failure to provide a**  
97 **future insurer with such information shall be considered a violation of**  
98 **subsection 6 of section 287.128.**

99         **10. (1) A client shall notify any prospective insurer of the**  
100 **client's previous or current relationship with a PEO. Failure to provide**  
101 **a future insurer with such information shall be considered a violation**  
102 **of subsection 6 of section 287.128.**

103         **(2) This subsection shall not apply if the PEO did not provide**  
104 **workers' compensation coverage to a client during the coemployment**  
105 **relationship.**

106           11. For purposes of chapter 288, a PEO registered under sections  
107 285.700 to 285.750 shall be treated as a "lesser employing unit" under  
108 section 288.032.

          285.750. 1. A person shall not knowingly:

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

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

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

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

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

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

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

24           (1) Deny an application for a license;

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

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

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

30           (5) Issue a cease and desist order.

✓