

ENROLLED HOUSE
BILL NO. 2267

By: Plunk of the House

and

Mickle of the Senate

An Act relating to labor; creating the Oklahoma Professional Employer Organization Recognition and Registration Act; providing short title; stating findings; defining terms; providing that certain rights, duties and obligations are unaffected; providing for tax credits and other incentives; specifying registration requirements for being a Professional Employer Organization (PEO); providing exemption from registration requirements; requiring Insurance Commissioner to maintain certain list; providing for forms; establishing fees; requiring PEO to maintain certain financial capability; requiring PEO to submit payroll tax statements to the Insurance Commissioner; providing for confidentiality of records; providing general requirements relating to contractual relationships, allocation of rights, duties and obligations, and professional employer agreements; requiring certain notice; providing for certain workers' compensation coverage; providing for certain employee benefits; providing limitations on liability; providing that certain agreements not be considered the sale of insurance; providing for collection of sales tax; providing that employees covered by the Employment Security Act of 1980 be considered as employees of the PEO; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma Professional Employer Organization Recognition and Registration Act".

B. The Legislature hereby finds:

1. That professional employer organizations provide a valuable service to commerce and the citizens of this state by increasing the opportunities of employers to develop cost-effective methods of satisfying their personnel requirements and providing employees with

access to certain employment benefits which might otherwise not be available to them;

2. That professional employer organizations operating in this state should be properly recognized and regulated by the Department of Insurance of this state, as provided in this act; and

3. That any allocation of the employer's duties and responsibilities pursuant to this act will preserve all rights to which their covered employees would be entitled under a traditional employment relationship.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

1. "Client" means any person who enters into a coemployment relationship as a coemployer with a professional employer organization (PEO);

2. "Coemployer" means either a PEO or a client;

3. "Coemployment relationship" means:

a. as between coemployers, a relationship whereby the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act, and which is intended to be an ongoing relationship, rather than a temporary or project specific relationship, and

b. as between each PEO and a covered employee as to which a professional employer agreement applies, an employment relationship whereby:

(1) such PEO is entitled to enforce those rights, and obligated to perform those duties and obligations, allocated to such PEO by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act, and

(2) such covered employee is entitled to enforce against such PEO those duties and obligations allocated to the PEO by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act;

c. as between each client and a covered employee to which a professional employer agreement applies and employment relationship whereby:

(1) such client is entitled to enforce those rights, and obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act and whereby such

client is responsible for any employer right or obligation not otherwise allocated by the professional employer agreement of the Oklahoma Professional Employer Organization Recognition and Registration Act, and

- (2) such covered employee is entitled to enforce against such client those duties and obligations allocated to the client by the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act and any other duties and obligations of an employer not otherwise allocated by the professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act;

4. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

5. "Covered Employee" means an individual having a coemployment relationship with a PEO and a client who have entered into a professional employer agreement with respect to such person, and shall include the client's officers, directors, shareholders, partners and managers to the extent such persons act as operational managers or perform services for the client;

6. "Department" means the Department of Insurance of the State of Oklahoma;

7. "Person" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity;

8. "Professional employer agreement" means a written contract by and between a client and a PEO under which the PEO and the client agree to establish a coemployment relationship and which satisfies the requirements of subsection C of Section 7 of this act;

9. "Professional Employer Organization" or PEO means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act regardless of its use of the term "professional employer organization", "PEO", "staff leasing company", "registered staff leasing company", "employee leasing company", or any other name;

10. "Professional employer services" means the service of entering into coemployment relationships under the Oklahoma Professional Employer Organization Recognition and Registration Act, in which, except in isolated instances, all or a majority of the employees providing services to a client or to a division or work unit of client are covered employees;

11. "Registrant" means a PEO registered under the Oklahoma Professional Employer Organization Recognition and Registration Act; and

12. "Temporary help services" means a service whereby a person hires workers and assigns them to a person for a temporary time period or nonpermanent basis to support or supplement the other person's workforce in special work situations such as, but not limited to, employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects. Temporary help services shall not be deemed professional employer services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.3 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Collective bargaining agreements. Nothing contained in the Oklahoma Professional Employer Organization Recognition and Registration Act or in any professional employer agreement shall affect, modify or amend any collective bargaining agreement, or the rights or obligations of any client, PEO, or covered employee under the National Labor Relations Act.

B. Licensing. Nothing contained in the Oklahoma Professional Employer Organization Recognition and Registration Act or any professional employer agreement shall affect, modify or amend any state, local, or federal licensing, registration, or certification requirement applicable to any client or covered employee.

C. Licensed employees. 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.

D. Licensed activities. A PEO 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 governmental entity solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to such requirements or regulation.

E. Tax credits and other incentives. For purposes of determination of tax credits and other economic incentives provided by this state and based on employment, covered employees shall be deemed employees solely of the client. 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. Each PEO will provide, upon request by a client, employment information reasonably required by any agency or department of this state responsible for administration of any such tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client seeking any such tax credit or economic incentive.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.4 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Registration required. Except as otherwise provided in the Oklahoma Professional Employer Organization Recognition and Registration Act, no person shall, unless such person is registered as a PEO under the Oklahoma Professional Employer Organization Recognition and Registration Act, provide, advertise, or otherwise

hold itself out as providing professional employer services in this state.

B. Registration information. Each PEO required to be registered under the Oklahoma Professional Employer Organization Recognition and Registration Act shall provide the Commissioner with information required by the Commissioner on forms prescribed by the Commissioner. At a minimum, PEOs shall provide the following information:

1. The name or names under which the PEO conducts business;
2. The address of the principal place of business of the PEO and the address of each office it maintains in this state;
3. The PEO's taxpayer or employer identification number;
4. A list by jurisdiction of each name under which the PEO 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 and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the PEO;
6. A statement of management, which shall include the name and evidence of the business experience of any person who serves as president, chief executive officer, or otherwise has the authority to act as senior executive officer of the PEO; and
7. A financial statement setting forth the financial condition of the PEO, as of a date not earlier than one hundred eighty (180) days prior to the date submitted to the Commissioner, prepared in accordance with generally accepted accounting principles, and audited or reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located. A PEO Group may submit combined or consolidated audited or reviewed financial statements to meet the requirements of this section.

C. Initial registration.

1. Each PEO operating within this state as of November 1, 2002, shall complete its initial registration not later than one hundred eighty (180) days after the end of the PEO's first fiscal year ending after November 1, 2002.
2. Each PEO not operating within this state as of November 1, 2002, shall complete its initial registration prior to commencement of operations within this state.

D. Renewal. Within one hundred eighty (180) days after the end of a registrant's fiscal year, such registrant shall renew its registration by notifying the Commissioner of any changes in the information provided in such registrant's most recent registration or renewal.

E. Group registration. Any two or more PEOs held under common control of any other person or persons acting in concert may be

registered as a PEO Group. A PEO Group may satisfy any reporting and financial requirements of this registration law on a consolidated basis.

F. De minimis exemption.

1. A PEO is exempt from the registration requirements payable under the Oklahoma Professional Employer Organization Recognition and Registration Act if such PEO:

- a. submits a properly executed request for exemption on a form provided by the Department,
- b. is domiciled outside this state and is licensed or registered as a professional employer organization in another state that has the same or greater requirements as the Oklahoma Professional Employer Organization Recognition and Registration Act,
- c. does not maintain an office in this state or solicit in any manner clients located or domiciled within this state, and
- d. does not have more than twenty-five covered employees employed or domiciled in this state; and

2. An exemption of a professional employer organization from the registration requirements under the Oklahoma Professional Employer Organization Recognition and Registration Act shall be valid for one (1) year, subject to renewal.

G. List. The Commissioner shall maintain a list of professional employer organizations registered or exempted under this Oklahoma Professional Employer Organization Recognition and Registration Act.

H. Forms. The Commissioner may prescribe forms necessary to promote the efficient administration of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.5 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Initial registration. Upon filing an initial registration statement under the Oklahoma Professional Employer Organization Recognition and Registration Act, a PEO shall pay an initial registration fee of Five Hundred Dollars (\$500.00).

B. Renewal. Upon each annual renewal of a registration statement filed under the Oklahoma Professional Employer Organization Recognition and Registration Act, a PEO shall pay a renewal fee of Two Hundred Fifty Dollars (\$250.00).

C. Exemption. Each PEO exempt from registration under the terms of this subsection shall pay an exemption fee in the amount of Two Hundred Fifty Dollars (\$250.00) upon initial application for exemption and upon each annual renewal of such exemption.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.6 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Net worth and bonding. Each PEO shall maintain either:

1. A minimum net worth of Fifty Thousand Dollars (\$50,000.00), as reflected in the financial statements submitted to the Commissioner with the initial registration and each annual renewal; or

2. A bond or securities with a minimum market value of Fifty Thousand Dollars (\$50,000.00), held by a depository designated by the Commissioner, securing payment by the PEO of all taxes, wages, benefits or other entitlement due to or with respect to a covered employee, if the PEO does not make such payments when due. Any bond or securities deposited under this subsection shall not be included for the purpose of calculation of the minimum net worth required by this subsection.

B. Payroll tax payments. A PEO shall submit to the Commissioner, within ninety (90) days after the end of each calendar quarter, a statement by an independent certified public accountant that all applicable state payroll taxes for covered employees located in this state have been paid on a timely basis for that quarter.

C. Record confidentiality. All records, reports and other information obtained from a PEO under the Oklahoma Professional Employer Organization Recognition and Registration Act, except to the extent necessary for the proper administration of the Oklahoma Professional Employer Organization Recognition and Registration Act by the Department, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.7 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Contractual relationship. Except as specifically provided in the Oklahoma Professional Employer Organization Recognition and Registration Act, the coemployment relationship between the client and the PEO, and between each coemployer and each covered employee, shall be governed by the professional employer agreement. Nothing contained in any professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act shall be deemed to:

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

2. Terminate an employment relationship existing prior to the effective date of a professional employer agreement; or

3. Create any new or additional enforcement right of a covered employee against a PEO not specifically allocated to such PEO in the professional employer agreement or the Oklahoma Professional Employer Organization Recognition and Registration Act.

B. Allocation of rights, duties and obligations. Except as specifically provided in the Oklahoma Professional Employer

Organization Recognition and Registration Act or in the professional employer agreement, in each coemployment relationship:

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

2. The PEO shall be entitled to exercise only those rights, and obligated to perform only those duties and responsibilities, specifically required by the Oklahoma Professional Employer Organization Recognition and Registration Act or set forth in the professional employer agreement. The rights, duties, and obligations of the PEO as coemployer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and the Oklahoma Professional Employer Organization Recognition and Registration Act during the term of coemployment by the PEO of such covered employee.

C. Professional employer agreement requirements. Each professional employer agreement shall include, at a minimum, the following:

1. The PEO shall reserve a right of direction and control over the covered employees; provided, that the client may retain the right to exercise such direction and control over covered employees as is necessary to conduct the client's business, to discharge any fiduciary responsibility which it may have, or to comply with any applicable licensure requirements;

2. The PEO shall have responsibility to pay wages and salaries to covered employees; to withhold, collect, report, and remit payroll-related and unemployment taxes; and, to the extent the PEO has assumed responsibility in the professional employer agreement, to make payments for employee benefits for covered employees;

3. Both the PEO and the client shall retain authority to hire, terminate, and discipline the covered employees; and

4. The responsibility to obtain workers' compensation coverage for covered employees, from a carrier licensed to do business in this state and otherwise in compliance with all applicable requirements, shall be specifically allocated to either the client or the PEO. If such responsibility is allocated to the PEO under any such agreement, such agreement shall require that the PEO maintain and provide to the client, at the termination of the agreement if requested by the client, records regarding the premium and loss experience related to workers' compensation insurance provided to covered employees pursuant to such agreement.

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

E. Workers' compensation. Both client and the PEO shall be considered the employer for the purpose of coverage under the Workers' Compensation Act and both the PEO and its client shall be entitled to protection of the exclusive remedy provision of the

Workers' Compensation Act irrespective of which coemployer obtains such workers' compensation coverage.

F. Benefit plans.

1. A client and a PEO shall each be deemed an employer for purposes of sponsoring retirement and welfare benefit plans for its covered employees.

2. A welfare benefit plan offered to the covered employees of a single PEO shall not be considered a multiple employer welfare arrangement, or MEWA, as provided for in Section 633 of Title 36 of the Oklahoma Statutes, and shall be exempt from the licensing requirements contained in Section 634 of Title 36 of the Oklahoma Statutes.

3. For purposes of the Small Employer Health Reform Act, a PEO shall be considered the employer of all of its covered employees and all covered employees of one or more clients participating in a health benefit plan sponsored by a single PEO shall be considered employees of the PEO.

4. If a PEO offers to its covered employees any health benefit plan which is not fully insured by an authorized insurer, the plan shall:

- a. utilize a third-party administrator licensed to do business in this state,
- b. hold all plan assets, including participant contributions, in a trust account, and
- c. provide sound reserves for such plan as determined using generally accepted actuarial standards.

G. Limitations on liability. Except to the extent otherwise provided in a professional employer agreement:

1. A PEO shall not be liable for the acts, errors, or omissions of a client, or of any covered employee when such covered employee is acting under the direction and control of a client;

2. A client shall not be liable for the acts, errors, or omissions of a PEO, or of any covered employee of the client and a PEO when such covered employee is acting under the direction and control of the PEO;

3. Nothing in this subsection shall serve to limit any contractual liability or obligation specifically provided in a professional employer agreement, nor shall this subsection in any way limit the liabilities and obligations of any PEO or client as defined elsewhere in the Oklahoma Professional Employer Organization Recognition and Registration Act; and

4. A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO 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 PEO unless the covered employees are included by specific reference in the professional

employer agreement and applicable prearranged employment contract, insurance contract, or bond.

H. Services not insurance. The sale of professional employer services provided by PEOs registered under the Oklahoma Professional Employer Organization Recognition and Registration Act shall not constitute the sale of insurance for purposes of Oklahoma Insurance Law.

I. Sales taxes. 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.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.8 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. For purposes of the Employment Security Act of 1980, covered employees of a PEO are considered solely the employees of the PEO, which shall be liable in accordance with the provisions of such act for the payment of contributions, penalties, and interest on wages paid by the PEO to its covered employees during the term of the applicable professional employer agreement.

B. The PEO shall report and pay all required contributions to the unemployment compensation fund using the state employer account number and the contribution rate of the PEO.

SECTION 9. This act shall become effective November 1, 2002.

Passed the House of Representatives the 5th day of March, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the 8th day of April, 2002.

Presiding Officer of the Senate