

BILL ANALYSIS

C.S.H.B. 2763
By: Hunter
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that statutory provisions relating to staff leasing services need to be updated and clarified. C.S.H.B. 2763 seeks to address these concerns by replacing provisions governing staff leasing services with provisions governing professional employer services and clarifying the rights, duties, and responsibilities of parties to a professional employer services agreement.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to commissioner of insurance in SECTIONS 16 and 29 and to the Texas Commission of Licensing and Regulation in SECTION 29 of this bill.

ANALYSIS

C.S.H.B. 2763 amends the Labor Code and Tax Code to replace statutory provisions governing staff leasing services with provisions governing professional employer organizations that provide professional employer services.

C.S.H.B. 2763 amends the Labor Code to define "professional employer services" to include the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees and exclude temporary help or a temporary common worker employer, an independent contractor, or the provision of services that otherwise meet the definition of "professional employer services" by certain persons. The bill defines "coemployment relationship" as a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and statutory provisions governing such an agreement.

C.S.H.B. 2763 establishes that a coemployment relationship is intended to be an ongoing relationship, rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between coemployers under a professional employer services agreement. The bill specifies that coemployment is not a joint employment arrangement and establishes the following in a coemployment relationship:

- the professional employer organization may enforce only those employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer services agreement or this bill;
- the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this bill; and
- the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the

professional employer services agreement or this bill.

C.S.H.B. 2763 specifies that to be considered a covered employee an individual must receive written notice of the coemployment relationship with the professional employer organization and the individual's coemployment relationship must be under a professional employer services agreement. The bill establishes that an individual who is an executive employee of the client is a covered employee, except to the extent the professional employer organization and the client expressly agree in the professional employer services agreement that the individual is not a covered employee.

C.S.H.B. 2763 establishes that a client and holder of a professional employer organization license are each considered an employer under state law for purposes of sponsoring retirement and welfare benefit plans for covered employees. The bill authorizes a licensed organization to sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate. The bill requires a fully insured welfare benefit plan offered to the covered employees of a licensed organization and provided by an authorized insurance company or a self-funded health benefit plan sponsored by the licensed organization to be treated for purposes of state law as a single employer welfare benefit plan.

C.S.H.B. 2763 authorizes a licensed organization to sponsor a benefit plan that is not fully insured, if the organization meets certain requirements and is approved to sponsor the plan by the commissioner of insurance, and sets out provisions relating to such a plan. The bill authorizes the commissioner, on notice and opportunity for all interested persons to be heard, to adopt rules and issue orders to augment and implement the regulation of such benefit plans, but prohibits the commissioner from adopting a rule that requires clients or covered employees to be members of an association or group in the same trade or industry in order to be covered by such a plan. The bill requires the rules to include all requirements to be met by the licensed organization and the plan and sets out those requirements.

C.S.H.B. 2763 authorizes a client, in addition to the licensed organization, to elect to obtain workers' compensation insurance coverage for covered employees through an insurance company under the Texas Workers' Compensation Act or through self-insurance. The bill requires the client and professional employer organization to specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees, and if so, to specify which party is required to maintain coverage. The bill specifies an individual who is an executive employee of the client, if the licensed organization maintains workers' compensation insurance coverage for the client, is eligible to be treated as an executive employee for premium calculation and classification purposes. The bill requires a copy of the professional employer services agreement to be provided to the Texas Department of Insurance (TDI) on request and specifies such information is confidential and not subject to disclosure under the state's public information law.

C.S.H.B. 2763 requires a client who elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy or other coverage to pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client. The bill clarifies that a licensed organization who maintains the workers' compensation insurance coverage is required to pay the premiums for the covered employees based on the experience rating of the client for the first two years the covered employees are covered under the professional employer organization's policy and as further provided by TDI rule. The bill requires an insurer, rather than TDI, to provide the necessary computations to the prospective workers' compensation insurer of the client to comply with the requirements for premium calculation if the client elects to obtain workers' compensation insurance after the expiration of the two-year period. The bill makes statutory provisions relating to the requirement of an employer to notify employees whether or not the employer has workers' compensation insurance coverage and relating to employer injury and occupational disease reports applicable to a client or licensed organization whether or not they elect to obtain workers' compensation

insurance coverage for covered employees. The bill specifies that the client is considered to be the insured employer for the purposes of recovery of a claim by the Texas Property and Casualty Insurance Guaranty Association.

C.S.H.B. 2763 requires the Texas Commission of Licensing and Regulation, not later than January 1, 2014, to adopt any rules necessary to implement the bill's provisions amending the Labor Code. The bill requires the commissioner of insurance, in adopting rules to implement self-funded health benefit plans for licensed organizations, to consider rules adopted with respect to similar benefit plans.

C.S.H.B. 2763 repeals the following provisions:

- Section 91.001(2), Labor Code
- Section 91.043, Labor Code
- Section 171.0001(2), Tax Code

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2763 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Chapter 91, Labor Code, is amended.

SECTION 2. Section 91.001, Labor Code, is amended by amending Subdivisions (1), (2-a), (3), (7), (11), (14), (15), (16), and (17) and adding Subdivisions (3-a), (3-b), and (7-a) to read as follows:

(1) "Applicant" means a person [~~business entity~~] applying for a license or the renewal of a license under this chapter.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations [~~staff leasing services companies~~];

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 91.001, Labor Code, is amended by amending Subdivisions (1), (2-a), (3), (7), (11), (14), (15), (16), and (17) and adding Subdivisions (3-a), (3-b), and (7-a) to read as follows:

(1) "Applicant" means a person [~~business entity~~] applying for a license or the renewal of a license under this chapter.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations [~~staff leasing services companies~~];

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

(3) "Client [company]" means any [a] person who enters into a professional employer services agreement [that contracts] with a license holder [and is assigned employees by the license holder under that contract].

(3-a) "Co-employer" means a professional employer organization or a client.

(3-b) "Co-employment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity [corporation] that offers or proposes to offer professional employer [staff leasing] services;

(B) possesses the authority to set policy and direct management of a business entity [company] that offers or proposes to offer professional employer [staff leasing] services;

(C) is employed, appointed, or authorized by a business entity [company] that offers or proposes to offer professional employer [staff leasing] services to enter into a professional employer services agreement [contract] with a client [company] on behalf of the business entity [company]; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer [staff leasing] services.

(7-a) "Covered employee" means an individual having a co-employment relationship with a professional employer organization and a client.

(11) "License holder" means a person licensed under this chapter to provide professional employer [staff leasing] services.

(14) "Professional employer services" means the services provided through co-employment relationships in which all or a majority of the employees providing services to a client or to a division or work

(3) "Client [company]" means any [a] person who enters into a professional employer services agreement [that contracts] with a license holder [and is assigned employees by the license holder under that contract].

(3-a) "Coemployer" means a professional employer organization or a client that is a party to a coemployment relationship.

(3-b) "Coemployment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity [corporation] that offers or proposes to offer professional employer [staff leasing] services;

(B) possesses the authority to set policy and direct management of a business entity [company] that offers or proposes to offer professional employer [staff leasing] services;

(C) is employed, appointed, or authorized by a business entity [company] that offers or proposes to offer professional employer [staff leasing] services to enter into a professional employer services agreement [contract] with a client [company] on behalf of the business entity [company]; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer [staff leasing] services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

(11) "License holder" means a person licensed under this chapter to provide professional employer [staff leasing] services.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work

~~unit of a client are covered employees. ["Staff leasing services" means an arrangement by which employees of a license holder are assigned to work at a client company and in which employment responsibilities are in fact shared by the license holder and the client company, the employee's assignment is intended to be of a long term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the license holder. The term includes professional employer organization services.] The term does not include:~~

- ~~(A) temporary help;~~
- ~~(B) an independent contractor;~~
- ~~(C) the provision of services that otherwise meet the definition of "professional employer [~~staff leasing~~] services" by one person solely to other persons who are related to the service provider by common ownership; or~~
- ~~(D) a temporary common worker employer as defined by Chapter 92.~~

~~(15) "Professional employer organization" [~~Staff leasing services company~~] means a business entity that offers professional employer [~~staff leasing~~] services. [~~The term includes a professional employer organization.~~]~~

~~(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company [~~client~~] to support or supplement the company's [~~client's~~] work force in a special work situation, including:~~

- ~~(A) an employee absence;~~
- ~~(B) a temporary skill shortage;~~
- ~~(C) a seasonal workload; or~~
- ~~(D) a special assignment or project.~~

~~(17) "Wages" means:~~

- ~~(A) compensation for labor or services rendered by a covered [~~an assigned~~] employee, whether computed on a time, task, piece, or other basis; and~~
- ~~(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered [~~an assigned~~] employee under a written agreement.~~

SECTION 3. Chapter 91, Labor Code, is

~~unit of a client are covered employees. ["Staff leasing services" means an arrangement by which employees of a license holder are assigned to work at a client company and in which employment responsibilities are in fact shared by the license holder and the client company, the employee's assignment is intended to be of a long term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the license holder. The term includes professional employer organization services.] The term does not include:~~

- ~~(A) temporary help;~~
- ~~(B) an independent contractor;~~
- ~~(C) the provision of services that otherwise meet the definition of "professional employer [~~staff leasing~~] services" by one person solely to other persons who are related to the service provider by common ownership; or~~
- ~~(D) a temporary common worker employer as defined by Chapter 92.~~

~~(15) "Professional employer organization" [~~Staff leasing services company~~] means a business entity that offers professional employer [~~staff leasing~~] services. [~~The term includes a professional employer organization.~~]~~

~~(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company [~~client~~] to support or supplement the company's [~~client's~~] work force in a special work situation, including:~~

- ~~(A) an employee absence;~~
- ~~(B) a temporary skill shortage;~~
- ~~(C) a seasonal workload; or~~
- ~~(D) a special assignment or project.~~

~~(17) "Wages" means:~~

- ~~(A) compensation for labor or services rendered by a covered [~~an assigned~~] employee, whether computed on a time, task, piece, or other basis; and~~
- ~~(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered [~~an assigned~~] employee under a written agreement.~~

SECTION 3. Chapter 91, Labor Code, is

amended by adding Sections 91.0015 and 91.0016 to read as follows:

Sec. 91.0015. CO-EMPLOYMENT RELATIONSHIP. (a) A co-employment relationship is intended to be an ongoing relationship rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between co-employers under a professional employer services agreement. Co-employment is not a joint employment arrangement.

(b) In a co-employment relationship:

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

(2) the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this chapter; and

(3) the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer services agreement or this chapter.

Sec. 91.0016. COVERED EMPLOYEE.

(a) A covered employee must meet all the following criteria:

(1) the individual must receive written notice of the co-employment relationship with the professional employer organization; and

(2) the individual's co-employment relationship must be under a professional employer services agreement subject to this chapter.

(b) An individual who is an officer, director, shareholder, partner, or manager of the client is a covered employee, except to the extent the professional employer organization and the client expressly agree in the professional employer services agreement that the individual is not a covered employee, if the individual meets the criteria of this section and acts as an operational manager or performs day-to-day operational services for the client.

amended by adding Sections 91.0011 and 91.0012 to read as follows:

Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A coemployment relationship is intended to be an ongoing relationship rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between coemployers under a professional employer services agreement. Coemployment is not a joint employment arrangement.

(b) In a coemployment relationship:

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

(2) the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this chapter; and

(3) the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer services agreement or this chapter.

Sec. 91.0012. COVERED EMPLOYEE.

(a) A covered employee must meet all the following criteria:

(1) the individual must receive written notice of the coemployment relationship with the professional employer organization; and

(2) the individual's coemployment relationship must be under a professional employer services agreement subject to this chapter.

(b) An individual who is an executive employee, as described by Section 406.097, of the client is a covered employee, except to the extent the professional employer organization and the client expressly agree in the professional employer services agreement that the individual is not a covered employee.

SECTION 4. Sections 91.002(b) and (c), Labor Code, are amended.

SECTION 5. Section 91.003(a), Labor Code, is amended.

SECTION 6. Sections 91.004, 91.005, 91.006, and 91.007, Labor Code, are amended to read as follows:

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage showing that either a license holder or a client maintains a policy of workers' compensation insurance constitutes proof of workers' compensation insurance coverage for the license holder and the client [~~company~~] with respect to all covered employees of the license holder and [~~assigned to~~] the client [~~company~~]. The state and a political subdivision of the state shall accept a certificate of insurance coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For a client [~~company~~] that has employees who are not covered [~~assigned~~] employees under a professional employer [~~staff-leasing~~] services agreement, the state or a political subdivision of the state may require the client [~~company~~] to furnish separate proof of workers' compensation insurance coverage for those employees.

Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS.

SECTION 7. Sections 91.011 and 91.012, Labor Code, are amended to read as follows:

Sec. 91.011. LICENSE REQUIRED. A person may not engage in or offer professional employer [~~staff-leasing~~] services in this state unless the person is employed, appointed, or authorized by a company that holds a license issued under this chapter.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Sections 91.004, 91.005, 91.006, 91.007, 91.011, and 91.012, Labor Code, are amended to read as follows:

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage or other evidence of coverage showing that either a license holder or a client maintains [~~a policy of~~] workers' compensation insurance coverage constitutes proof of workers' compensation insurance coverage for the license holder and the client [~~company~~] with respect to all covered employees of the license holder and [~~assigned to~~] the client [~~company~~]. The state and a political subdivision of the state shall accept a certificate of insurance coverage or other evidence of coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For a client [~~company~~] that has employees who are not covered [~~assigned~~] employees under a professional employer [~~staff-leasing~~] services agreement, the state or a political subdivision of the state may require the client [~~company~~] to furnish separate proof of workers' compensation insurance coverage for those employees.

Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS.

SECTION 6. (continued)

Sec. 91.011. LICENSE REQUIRED. A person may not engage in or offer professional employer [~~staff-leasing~~] services in this state unless the person holds a license issued under this chapter.

Sec. 91.012. GENERAL LICENSE REQUIREMENTS.

SECTION 8. Sections 91.014(a) and (c), Labor Code, are amended.

SECTION 9. Section 91.015(a), Labor Code, is amended.

SECTION 10. Section 91.017(a), Labor Code, is amended to read as follows:

(a) Each applicant for an original or renewal professional employer organization [~~staff leasing services company~~] license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule.

SECTION 11. Sections 91.018(e) and (f), Labor Code, are amended.

SECTION 12. Sections 91.019(a), (b), and (c), Labor Code, are amended.

SECTION 13. Section 91.020, Labor Code, is amended.

SECTION 14. Section 91.021(b), Labor Code, is amended.

SECTION 15. The heading to Subchapter C, Chapter 91, Labor Code, is amended to read as follows:

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING SERVICES~~] AGREEMENT

SECTION 16. Sections 91.031 and 91.032, Labor Code, are amended to read as follows:

Sec. 91.031. AGREEMENT; NOTICE.

(a) A license holder shall establish the terms of a professional employer [~~staff leasing~~] services agreement by a written contract between the license holder and the client [~~company~~].

(b) The license holder shall give written notice of the agreement as it affects covered [~~assigned~~] employees to each covered

Sec. 91.012. GENERAL LICENSE REQUIREMENTS.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Sections 91.017(a) and (c), Labor Code, are amended to read as follows:

(a) Each applicant for an original or renewal professional employer organization [~~staff leasing services company~~] license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule.

(c) Fees collected by the department under this chapter may [~~shall~~] be used only to implement this chapter.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Subchapter C, Chapter 91, Labor Code, is amended to read as follows:

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING SERVICES~~] AGREEMENT

SECTION 14. (continued)

Sec. 91.031. AGREEMENT; NOTICE. (a)

A license holder shall establish the terms of a professional employer [~~staff leasing~~] services agreement by a written contract between the license holder and the client [~~company~~].

(b) The license holder shall give written notice of the agreement as it affects covered [~~assigned~~] employees to each covered

employee of the license holder and ~~assigned to~~ a client ~~company worksite~~.

(c) The written notice required by Subsection (b) must be given to each covered ~~assigned~~ employee not later than the first payday after the date on which that individual becomes a covered ~~an assigned~~ employee.

Sec. 91.032. CONTRACT REQUIREMENTS

SECTION 17. Section 91.041, Labor Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (a-3), and (a-4) to read as follows:

(a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees. [A license holder may sponsor and maintain employee benefit plans for the benefit of assigned employees. A client company may include assigned employees in any benefit plan sponsored by the client company.]

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state shall be treated for purposes of state law as a single welfare benefit plan.

(a-3) If a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the plan must:

(1) use a third-party administrator licensed to do business in this state;

(2) hold all plan assets, including participant contributions, in a trust account consistent with the requirements of Section 403 of the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1103);

(3) provide sound reserves for the plan as determined using generally accepted actuarial standards of practice and

employee ~~assigned to a client company worksite~~.

(c) The written notice required by Subsection (b) must be given to each covered ~~assigned~~ employee not later than the first payday after the date on which that individual becomes a covered ~~an assigned~~ employee.

Sec. 91.032. CONTRACT REQUIREMENTS

SECTION 15. Section 91.041, Labor Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees. [A license holder may sponsor and maintain employee benefit plans for the benefit of assigned employees. A client company may include assigned employees in any benefit plan sponsored by the client company.]

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state ~~or a self-funded health benefit plan sponsored by a license holder as provided by Section 91.0411~~ shall be treated for purposes of state law as a single ~~employer~~ welfare benefit plan.

consistent with the prudence and loyalty standards of care for fiduciaries under the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and

(4) provide written notice to each covered employee participating in the health benefit plan that the plan is self-funded or is not fully insured.

(a-4) The requirements imposed on license holders in Subsection (a-3) are in addition to any other statutory or regulatory requirement imposed on employers in this state offering self-funded health benefit plans in this state, including those prescribed by the Insurance Code.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client [company], and its covered [assigned] employees:

- (1) the type of coverage;
- (2) the identity of each insurer for each type of coverage;
- (3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;
- (4) the policy limits on each insurance policy; and
- (5) whether the coverage is fully insured, partially insured, or fully self-funded.

No equivalent provision.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client [company], and its covered [assigned] employees:

- (1) the type of coverage;
- (2) the identity of each insurer for each type of coverage;
- (3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;
- (4) the policy limits on each insurance policy; and
- (5) whether the coverage is fully insured, partially insured, or fully self-funded.

SECTION 16. Subchapter D, Chapter 91, Labor Code, is amended by adding Section 91.0411 to read as follows:

Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT PLAN. (a) In this section, "commissioner" means the commissioner of insurance.

(b) A license holder may sponsor a benefit plan that is not fully insured if the license holder meets the requirements of this section and is approved to sponsor the plan by the commissioner.

(c) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement the regulation of benefit plans sponsored by a license holder that are not fully insured. The commissioner may not adopt a rule that requires clients or covered employees to be members of an association

or group in the same trade or industry in order to be covered by a license holder-sponsored benefit plan that is not fully insured. The rules must include all requirements that must be met by the license holder and the plan, including:

- (1) initial and final approval requirements;
- (2) authority to prescribe forms and items to be submitted to the commissioner by the license holder;
- (3) a fidelity bond;
- (4) use of an independent actuary;
- (5) use of a third-party administrator;
- (6) authority for the commissioner to examine an application or a plan;
- (7) the minimum number of clients and covered employees covered by the plan;
- (8) standards for those natural persons managing the plan;
- (9) the minimum amount of gross contributions;
- (10) the minimum amount of written commitment, binder, or policy for stop-loss insurance;
- (11) the minimum amount of reserves; and
- (12) a fee in an amount reasonable and necessary to defray the costs of administering this section to be deposited to the credit of the operating fund of the Texas Department of Insurance.

(d) Information submitted under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) Each license holder under this section shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is \$50, payable at the time of appointment.

(f) The commissioner may examine the affairs of any plan and shall have access to the records of the plan. The commissioner may examine under oath a manager or employee of the license holder in connection with the plan.

(g) In addition to any requirement or remedy under a law, the commissioner may suspend, revoke, or limit the authorization of a plan if the commissioner determines, after notice and hearing, that the plan does not comply with this section. The commissioner may notify the attorney general of a violation of this section, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive

relief or both.

(h) A plan under this section is subject to Chapters 401, 404, 441, and 443, Insurance Code.

SECTION 18. Section 91.042, Labor Code, is amended by amending Subsections (a), (b), (c), (d), and (e) and adding Subsections (a-1) and (a-2) to read as follows:

(a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered [~~the license holder's assigned~~] employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain the policy for that coverage.

(a-2) If the client elects to maintain workers' compensation insurance for the covered employees under the client's policy, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation insurance for covered employees, the license holder shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client [~~company~~] for the first two years the covered

SECTION 17. Section 91.042, Labor Code, is amended by amending Subsections (a) through (h) and adding Subsections (a-1), (a-2), and (c-1) to read as follows:

(a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered [~~the license holder's assigned~~] employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain coverage. If the license holder maintains workers' compensation insurance coverage for the client, an individual who is an executive employee, as described by Section 406.097, of the client is eligible to be treated as an executive employee for premium calculation and classification purposes. A copy of the professional employer services agreement must be provided to the Texas Department of Insurance on request. Information obtained by the Texas Department of Insurance under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(a-2) If the client elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy ~~or other coverage~~, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation insurance coverage for covered employees, the license holder shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client [~~company~~] for the first two years the

employees are covered under the professional employer organization's policy [client company has a contract with the license holder] and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client [~~company~~] shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance for covered employees, the client [~~company~~] and the license holder are subject to Sections 406.034 and 408.001.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance for covered employees, both the license holder and the client [~~company~~] are subject to Sections 406.004 and 406.033.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain [company obtains a new] workers' compensation insurance for covered employees through a policy maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain workers' compensation coverage for employees previously covered by the former professional employer organization's policy through a policy maintained by the client or a third party, including a policy maintained by a successor professional employer organization [~~policy in the company's own name or adds the company's former assigned workers to an existing policy~~], the premium for the workers' compensation insurance coverage for the client [~~policy of the company~~] shall be based on the lower of:

- (1) the experience modifier of the client [~~company~~] before being covered under the professional employer organization's policy [~~entering into the staff leasing arrangement~~]; or
- (2) the experience modifier of the license holder at the time the client's coverage

covered employees are covered under the professional employer organization's policy [client company has a contract with the license holder] and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client [~~company~~] shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance coverage for covered employees, the client [~~company~~] and the license holder are subject to Sections 406.005, 406.034, [and] 408.001, and 411.032.

(c-1) Notwithstanding Subsection (c), for purposes of Section 462.308(a)(2), Insurance Code, the client is considered to be the insured employer.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance coverage for covered employees, both the license holder and the client [~~company~~] are subject to Sections 406.004, 406.005, [and] 406.033, and 411.032.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain [company obtains a new] workers' compensation insurance coverage for covered employees through coverage maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain, through coverage maintained by the client or through coverage maintained by a successor professional employer organization, workers' compensation insurance coverage for employees previously covered by the former professional employer organization's policy [~~policy in the company's own name or adds the company's former assigned workers to an existing policy~~], the premium for the workers' compensation insurance coverage for the client [~~policy of the company~~] shall be based on the lower of:

- (1) the experience modifier of the client [~~company~~] before being covered under the professional employer organization's coverage [~~entering into the staff leasing arrangement~~]; or
- (2) the experience modifier of the license holder at the time the client's coverage under

under the professional employer organization's policy is [staff-leasing arrangement] terminated.

No Equivalent Provision.

No Equivalent Provision.

No Equivalent Provision.

the professional employer organization's coverage is [staff-leasing arrangement] terminated.

(f) On request, an insurer [the-Texas Department of Insurance] shall provide the necessary computations to the prospective workers' compensation insurer of the client [company] to comply with Subsection (e).

(g) On the written request of a client [company], a license holder that elects to provide workers' compensation insurance for covered [assigned] employees shall provide to the client [company] a list of:

- (1) claims associated with that client [company] made against the license holder's workers' compensation policy; and
- (2) payments made and reserves established on each claim.

(h) The license holder shall provide the information described by Subsection (g) in writing from the license holder's own records, if the license holder is a qualified self-insurer, or from information the license holder received from the license holder's workers' compensation insurance provider following the license holder's request under Section 2051.151, Insurance Code, not later than the 60th day after the date the license holder receives the client's [client company's] written request. For purposes of this subsection, information is considered to be provided to the client [company] on the date the information is:

- (1) received by the United States Postal Service; or
- (2) personally delivered to the client [company].

SECTION 19. Sections 91.044, 91.046, 91.048, 91.050, and 91.061, Labor Code, are amended to read as follows:

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL.

Sec. 91.046. CONTRACTUAL DUTIES.

Sec. 91.048. REQUIRED INFORMATION.

Sec. 91.050. TAX CREDITS AND

SECTION 18. Sections 91.044, 91.046, 91.048, 91.050, 91.061, 92.012, and 201.030, Labor Code, are amended to read as follows:

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL.

Sec. 91.046. CONTRACTUAL DUTIES.

Sec. 91.048. REQUIRED INFORMATION.

Sec. 91.050. Substantially the same as the

OTHER INCENTIVES.

Sec. 91.061. PROHIBITED ACTS. A person may not:

- (1) engage in or offer professional employer [~~staff leasing~~] services without holding a license under this chapter as a professional employer organization [~~staff leasing services company~~];
- (2) use the name or title "professional employer organization," [~~"staff leasing company,"~~] "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," [~~"licensed staff leasing company,"~~] "~~staff leasing services company~~," "~~professional employer organization~~,"] or "administrative employer" or otherwise represent that the entity is licensed under this chapter unless the entity holds a license issued under this chapter;
- (3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;
- (4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or
- (5) use or attempt to use a license that has expired or been revoked.

SECTION 20. Section 92.012, Labor Code, is amended.

SECTION 21. Section 201.030, Labor Code, is amended.

SECTION 22. Section 207.045(i), Labor Code, is amended.

No equivalent provision.

introduced version.

Sec. 91.061. PROHIBITED ACTS. A person may not:

- (1) engage in or offer professional employer [~~staff leasing~~] services without holding a license under this chapter as a professional employer organization [~~staff leasing services company~~];
- (2) use the name, ~~or~~ title, or designation "professional employer organization," "PEO," "~~staff leasing company~~," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," [~~"licensed staff leasing company,"~~] "~~staff leasing services company~~," "~~professional employer organization~~,"] or "administrative employer" or otherwise represent that the entity is licensed under this chapter unless the entity holds a license issued under this chapter;
- (3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;
- (4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or
- (5) use or attempt to use a license that has expired or been revoked.

SECTION 18. (continued) Same as introduced version.

SECTION 18. (continued) Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. The heading to Section 415.011, Labor Code, is amended to read as follows:

Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF LEASING SERVICES COMPANY~~] WORKERS' COMPENSATION CLAIM AND

PAYMENT INFORMATION;
ADMINISTRATIVE VIOLATION.

No equivalent provision.

SECTION 21. Section 415.011, Labor Code, is amended by amending Subsections (a) and (c) and adding Subsection (a-1) to read as follows:

(a) In this section, "license holder" has the meaning assigned by Section 91.001.

(a-1) Except as provided by Subsection (c), a [~~staff leasing services company~~] license holder commits a violation if the license holder fails to provide the information required by Sections 91.042(g) and (h).

(c) A [~~staff leasing services company~~] license holder does not commit an administrative violation under this section if the license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of Section 2051.151, Insurance Code.

SECTION 23. Section 151.057, Tax Code, is amended.

SECTION 22. Same as introduced version.

SECTION 24. Section 171.0001(15), Tax Code, is amended to read as follows:

SECTION 23. Section 171.0001, Tax Code, is amended by amending Subdivisions (6) and (15) and adding Subdivision (8-a) to read as follows:

(6) "Client [~~company~~]" means:

(A) a client as that term is defined by Section 91.001 [~~person that contracts with a license holder under Chapter 91, Labor Code, and is assigned employees by the license holder under that contract~~]; or

(B) a client of a temporary employment service, as that term is defined by Section 93.001(2), Labor Code, to whom individuals are assigned for a purpose described by that subdivision.

(8-a) "Covered employee" has the meaning assigned by Section 91.001, Labor Code.

(15) "Professional employer organization" ["~~Staff leasing services company~~"] means:

(A) a business entity that offers professional employer [~~staff leasing~~] services, as that term is defined by Section

(15) "Professional employer organization" ["~~Staff leasing services company~~"] means:

(A) a business entity that offers professional employer [~~staff leasing~~] services, as that term is defined by Section 91.001, Labor

91.001, Labor Code; or
(B) a temporary employment service, as that term is defined by Section 93.001, Labor Code.

SECTION 25. Section 171.101(b), Tax Code, is amended.

SECTION 26. Section 171.1011(k), Tax Code, is amended.

SECTION 27. Sections 171.1013(d) and (e), Tax Code, are amended.

SECTION 28. Section 171.2125, Tax Code, is amended.

SECTION 29. The following laws are repealed:

- (1) Section 91.001(2), Labor Code; and
- (2) Section 91.043, Labor Code.

SECTION 30. (a) Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt any rules necessary to administer Chapter 91, Labor Code, as amended by this Act.

(b) The changes in law made by this Act apply only to a professional employer services agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement is entered into, and the former law is continued in effect for that purpose.

SECTION 31. This Act takes effect September 1, 2013.

Code; or
(B) a temporary employment service, as that term is defined by Section 93.001, Labor Code.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. The following laws are repealed:

- (1) Section 91.001(2), Labor Code;
- (2) Section 91.043, Labor Code; and
- (3) Section 171.0001(2), Tax Code.

SECTION 29. (a) Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt any rules necessary to administer Chapter 91, Labor Code, as amended by this Act.

(b) The changes in law made by this Act apply only to a professional employer services agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement is entered into, and the former law is continued in effect for that purpose.

(c) Section 91.042(c-1), Labor Code, as added by this Act, is not intended to change the interpretation of Section 462.308, Insurance Code, but is intended to clarify the application of that section.

(d) In adopting rules to implement Section 91.0411, Labor Code, as added by this Act, the commissioner of insurance shall consider rules adopted with respect to similar benefit plans.

SECTION 30. Same as introduced version.