

AN ACT

relating to the regulation of professional employer services;
authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 91, Labor Code, is amended to read as follows:

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS [~~STAFF LEASING SERVICES~~]

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

1 department in accomplishing the provisions of this chapter.

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

6 (3-a) "Coemployer" means a professional employer
7 organization or a client that is a party to a coemployment
8 relationship.

9 (3-b) "Coemployment relationship" means a contractual
10 relationship between a client and a professional employer
11 organization that involves the sharing of employment
12 responsibilities with or allocation of employment responsibilities
13 to covered employees in accordance with the professional employer
14 services agreement and this chapter.

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

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

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

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

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

4 (7-a) "Covered employee" means an individual having a
5 coemployment relationship with a professional employer
6 organization and a client.

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

10 (14) "Professional employer services" means the
11 services provided through coemployment relationships in which all
12 or a majority of the employees providing services to a client or to
13 a division or work unit of a client are covered employees. ["Staff
14 leasing services" means an arrangement by which employees of a
15 license holder are assigned to work at a client company and in which
16 employment responsibilities are in fact shared by the license
17 holder and the client company, the employee's assignment is
18 intended to be of a long-term or continuing nature, rather than
19 temporary or seasonal in nature, and a majority of the work force at
20 a client company worksite or a specialized group within that work
21 force consists of assigned employees of the license holder. The
22 term includes professional employer organization services.] The
23 term does not include:

- 24 (A) temporary help;
25 (B) an independent contractor;
26 (C) the provision of services that otherwise meet
27 the definition of "professional employer [~~staff leasing~~]

1 services" by one person solely to other persons who are related to
2 the service provider by common ownership; or

3 (D) a temporary common worker employer as defined
4 by Chapter 92.

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

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

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

17 (17) "Wages" means:

18 (A) compensation for labor or services rendered
19 by a covered [~~an assigned~~] employee, whether computed on a time,
20 task, piece, or other basis; and

21 (B) vacation pay, holiday pay, sick leave pay,
22 parental leave pay, severance pay, bonuses, commissions, stock
23 option grants, or deferred compensation owed to a covered [~~an~~
24 ~~assigned~~] employee under a written agreement.

25 SECTION 3. Chapter 91, Labor Code, is amended by adding
26 Sections 91.0011 and 91.0012 to read as follows:

27 Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A

1 coemployment relationship is intended to be an ongoing relationship
2 rather than a temporary or specific one, in which the rights,
3 duties, and obligations of an employer that arise out of an
4 employment relationship are allocated between coemployers under a
5 professional employer services agreement. Coemployment is not a
6 joint employment arrangement.

7 (b) In a coemployment relationship:

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

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

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

20 Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee
21 must meet all the following criteria:

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

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

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

6 SECTION 4. Subsections (b) and (c), Section 91.002, Labor
7 Code, are amended to read as follows:

8 (b) Each person who offers professional employer [~~staff~~
9 ~~leasing~~] services is subject to this chapter and the rules adopted
10 by the commission.

11 (c) Notwithstanding any other provision of this chapter,
12 nothing in this chapter preempts the existing statutory or
13 rulemaking authority of any other state agency or entity to
14 regulate professional employer [~~staff leasing~~] services in a manner
15 consistent with the statutory authority of that state agency or
16 entity.

17 SECTION 5. Subsection (a), Section 91.003, Labor Code, is
18 amended to read as follows:

19 (a) Each state agency that in performing duties under other
20 law affects the regulation of professional employer [~~staff leasing~~]
21 services shall cooperate with the department and other state
22 agencies as necessary to implement and enforce this chapter.

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

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

26 (a) This chapter does not exempt a client of a license holder, or
27 any covered [~~assigned~~] employee, from any other license

1 requirements imposed under local, state, or federal law.

2 (b) A covered [~~An~~] employee who is licensed, registered, or
3 certified under law [~~and who is assigned to a client company~~] is
4 considered to be an employee of the client [~~company~~] for the purpose
5 of that license, registration, or certification.

6 (c) A license holder is not engaged in the unauthorized
7 practice of an occupation, trade, or profession that is licensed,
8 certified, or otherwise regulated by a governmental entity solely
9 by entering into a professional employer services [~~staff leasing~~]
10 agreement with a client [~~company~~] and covered [~~assigned~~] employees.

11 Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With
12 respect to a bid, contract, purchase order, or agreement entered
13 into with the state or a political subdivision of the state, a
14 client's [~~client company's~~] status or certification as a small,
15 minority-owned, disadvantaged, or woman-owned business enterprise
16 or as a historically underutilized business is not affected because
17 the client [~~company~~] has entered into a professional employer
18 services [~~an~~] agreement with a license holder or uses the services
19 of a license holder.

20 Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A
21 certificate of insurance coverage or other evidence of coverage
22 showing that either a license holder or a client maintains [~~a policy~~
23 ~~of~~] workers' compensation insurance coverage constitutes proof of
24 workers' compensation insurance coverage for the license holder and
25 the client [~~company~~] with respect to all covered employees of the
26 license holder and [~~assigned to~~] the client [~~company~~]. The state
27 and a political subdivision of the state shall accept a certificate

1 of insurance coverage or other evidence of coverage described by
2 this section as proof of workers' compensation coverage under
3 Chapter 406.

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

10 Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This
11 chapter does not relieve a client [~~company~~] of a right, obligation,
12 or duty under:

- 13 (1) Chapter 101;
14 (2) the federal National Labor Relations Act (29
15 U.S.C. Section 151 et seq.);
16 (3) the federal Railway Labor Act (45 U.S.C. Section
17 151 et seq.); or
18 (4) any other law governing labor relations.

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

22 Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified
23 to serve as a controlling person of a license holder under this
24 chapter, that person must be at least 18 years of age and have
25 educational, managerial, or business experience relevant to:

- 26 (1) operation of a business entity offering
27 professional employer [~~staff leasing~~] services; or

1 (2) service as a controlling person of a professional
2 employer organization [~~staff leasing services company~~].

3 SECTION 7. Subsections (a) and (c), Section 91.014, Labor
4 Code, are amended to read as follows:

5 (a) An applicant for an original or renewal license must
6 demonstrate positive working capital in the following amounts:

7 (1) \$50,000 if the applicant employs fewer than 250
8 covered [~~assigned~~] employees;

9 (2) \$75,000 if the applicant employs at least 250 but
10 not more than 750 covered [~~assigned~~] employees; and

11 (3) \$100,000 if the applicant employs more than 750
12 covered [~~assigned~~] employees.

13 (c) Information submitted to or maintained by the
14 department is subject to Chapter 552, Government Code, other than
15 information related to:

16 (1) identification of clients [~~client companies~~];

17 (2) working capital;

18 (3) financial statements; or

19 (4) federal tax returns.

20 SECTION 8. Subsection (a), Section 91.015, Labor Code, is
21 amended to read as follows:

22 (a) To receive a professional employer organization [~~staff~~
23 ~~leasing services company~~] original license, a person shall file
24 with the department a written application accompanied by the
25 application fee.

26 SECTION 9. Subsections (a) and (c), Section 91.017, Labor
27 Code, are amended to read as follows:

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

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

7 SECTION 10. Subsections (e) and (f), Section 91.018, Labor
8 Code, are amended to read as follows:

9 (e) A license holder offering professional employer [~~staff~~
10 ~~leasing~~] services in more than one state may advertise in this state
11 using the name of its parent company or under a trade name,
12 trademark, or service mark. The trade name, trademark, service
13 mark, or parent company name must be listed on the license in
14 addition to the licensed name used by the license holder in this
15 state.

16 (f) Each written proposal provided to a prospective client
17 [~~company~~] and each contract between a license holder and a client
18 [~~company~~] or covered [~~assigned~~] employee shall clearly identify the
19 name of the license holder. A proposal or contract may also
20 identify the trade name, trademark, service mark, or parent company
21 name of the license holder. A license holder may use written
22 materials including forms, benefit information, letterhead, and
23 business cards that bear only the trade name, trademark, service
24 mark, or parent company name of the license holder.

25 SECTION 11. Subsections (a), (b), and (c), Section 91.019,
26 Labor Code, are amended to read as follows:

27 (a) The commission by rule shall provide for the issuance of

1 a limited license to a person who seeks to offer limited
2 professional employer [~~staff leasing~~] services in this state.

3 (b) For purposes of this section, a professional employer
4 organization [~~staff leasing services company~~] is considered to be
5 offering limited professional employer [~~staff leasing~~] services if
6 the professional employer organization [~~staff leasing services~~
7 ~~company~~]:

8 (1) employs fewer than 50 covered [~~assigned~~] employees
9 in this state at any one time;

10 (2) does not provide covered [~~assigned~~] employees to a
11 client [~~company~~] based or domiciled in this state; and

12 (3) does not maintain an office in this state or
13 solicit clients [~~client companies~~] located or domiciled in this
14 state.

15 (c) A professional employer organization [~~staff leasing~~
16 ~~services company~~] that offers limited professional employer [~~staff~~
17 ~~leasing~~] services shall complete the application forms and pay the
18 fees for a limited license as prescribed by the department. A
19 limited license is valid for one year from the date of issuance and
20 may be renewed annually on submission of a renewal application and
21 payment of the required fees.

22 SECTION 12. Section 91.020, Labor Code, is amended to read
23 as follows:

24 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The
25 department may take disciplinary action against a license holder on
26 any of the following grounds:

27 (1) engaging in professional employer [~~staff leasing~~]

1 services or offering to engage in the provision of professional
2 employer [~~staff leasing~~] services without a license;

3 (2) transferring or attempting to transfer a license
4 issued under this chapter;

5 (3) violating this chapter or any order or rule issued
6 by the executive director or commission under this chapter;

7 (4) failing after the 31st day after the date on which
8 a felony conviction of a controlling person is final to notify the
9 department in writing of the conviction;

10 (5) failing to cooperate with an investigation,
11 examination, or audit of the license holder's records conducted by
12 the license holder's insurance company or the insurance company's
13 designee, as allowed by the insurance contract or as authorized by
14 law by the Texas Department of Insurance;

15 (6) failing after the 31st day after the effective
16 date of a change in ownership, principal business address, or the
17 address of accounts and records to notify the department and the
18 Texas Department of Insurance of the change;

19 (7) failing to correct any tax filings or payment
20 deficiencies within a reasonable time as determined by the
21 executive director;

22 (8) refusing, after reasonable notice, to meet
23 reasonable health and safety requirements within the license
24 holder's control and made known to the license holder by a federal
25 or state agency;

26 (9) being delinquent in the payment of the license
27 holder's insurance premiums other than those subject to a

1 legitimate dispute;

2 (10) being delinquent in the payment of any employee
3 benefit plan premiums or contributions other than those subject to
4 a legitimate dispute;

5 (11) knowingly making a material misrepresentation to
6 an insurance company or to the department or other governmental
7 agency;

8 (12) failing to maintain the working capital required
9 under Section 91.014; or

10 (13) using professional employer [~~staff leasing~~]
11 services to avert or avoid an existing collective bargaining
12 agreement.

13 SECTION 13. Subsection (b), Section 91.021, Labor Code, is
14 amended to read as follows:

15 (b) A professional employer organization [~~staff leasing~~
16 ~~services company~~] may authorize an assurance organization that is
17 qualified and approved by the commission to act on its behalf in
18 complying with the licensing requirements of this chapter,
19 including the electronic filing of information and the payment of
20 application and licensing fees. Use of an assurance organization
21 is optional and is not mandatory for a professional employer
22 organization [~~staff leasing services company~~].

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

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

27 Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder

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

4 (b) The license holder shall give written notice of the
5 agreement as it affects covered [~~assigned~~] employees to each
6 covered employee [~~assigned to a client company worksite~~].

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

11 Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional
12 employer services agreement [~~contract~~] between a license holder and
13 a client [~~company~~] must provide that the license holder:

14 (1) shares, as provided by Subsection (b), with the
15 client [~~company~~] the right of direction and control over covered
16 employees [~~assigned to a client's worksites~~];

17 (2) assumes responsibility for the payment of wages to
18 the covered [~~assigned~~] employees without regard to payments by the
19 client to the license holder;

20 (3) assumes responsibility for the payment of payroll
21 taxes and collection of taxes from payroll on covered [~~assigned~~]
22 employees;

23 (4) shares, as provided by Subsection (b), with the
24 client [~~company~~] the right to hire, fire, discipline, and reassign
25 the covered [~~assigned~~] employees; and

26 (5) shares, as provided by Subsection (b), with the
27 client [~~company~~] the right of direction and control over the

1 adoption of employment and safety policies and the management of
2 workers' compensation claims, claim filings, and related
3 procedures.

4 (b) Notwithstanding any other provision of this chapter, a
5 client [~~company~~] retains sole responsibility for:

6 (1) the direction and control of covered [~~assigned~~]
7 employees as necessary to conduct the client's [~~client company's~~]
8 business, discharge any applicable fiduciary duty, or comply with
9 any licensure, regulatory, or statutory requirement;

10 (2) goods and services produced by the client
11 [~~company~~]; and

12 (3) the acts, errors, and omissions of covered
13 [~~assigned~~] employees committed within the scope of the client's
14 [~~client company's~~] business.

15 (c) Notwithstanding Subsection (a)(2), a client [~~company~~]
16 is solely obligated to pay any wages for which:

17 (1) obligation to pay is created by an agreement,
18 contract, plan, or policy between the client [~~company~~] and the
19 covered [~~assigned~~] employee; and

20 (2) the professional employer organization [~~staff~~
21 ~~leasing services company~~] has not contracted to pay.

22 (d) Each professional employer organization [~~staff leasing~~
23 ~~services company~~] shall disclose the requirements of Subsection (c)
24 in writing to each covered [~~assigned~~] employee.

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

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

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

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

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

22 (1) the type of coverage;

23 (2) the identity of each insurer for each type of
24 coverage;

25 (3) the amount of benefits provided for each type of
26 coverage and to whom or in whose behalf benefits are to be paid;

27 (4) the policy limits on each insurance policy; and

1 (5) whether the coverage is fully insured, partially
2 insured, or fully self-funded.

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

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

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

10 (c) The commissioner may, on notice and opportunity for all
11 interested persons to be heard, adopt rules and issue orders
12 reasonably necessary to augment and implement the regulation of
13 benefit plans sponsored by a license holder that are not fully
14 insured. The commissioner may not adopt a rule that requires
15 clients or covered employees to be members of an association or
16 group in the same trade or industry in order to be covered by a
17 license holder-sponsored benefit plan that is not fully insured.
18 The rules must include all requirements that must be met by the
19 license holder and the plan, including:

20 (1) initial and final approval requirements;

21 (2) authority to prescribe forms and items to be
22 submitted to the commissioner by the license holder;

23 (3) a fidelity bond;

24 (4) use of an independent actuary;

25 (5) use of a third-party administrator;

26 (6) authority for the commissioner to examine an
27 application or a plan;

1 (7) the minimum number of clients and covered
2 employees covered by the plan;

3 (8) standards for those natural persons managing the
4 plan;

5 (9) the minimum amount of gross contributions;

6 (10) the minimum amount of written commitment, binder,
7 or policy for stop-loss insurance;

8 (11) the minimum amount of reserves; and

9 (12) a fee in an amount reasonable and necessary to
10 defray the costs of administering this section to be deposited to
11 the credit of the operating fund of the Texas Department of
12 Insurance.

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

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

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

24 (g) In addition to any requirement or remedy under a law,
25 the commissioner may suspend, revoke, or limit the authorization of
26 a plan if the commissioner determines, after notice and hearing,
27 that the plan does not comply with this section. The commissioner

1 may notify the attorney general of a violation of this section, and
2 the attorney general may apply to a district court in Travis County
3 for leave to file suit in the nature of quo warranto or for
4 injunctive relief or both.

5 (h) A plan under this section is subject to Chapters 401,
6 404, 441, and 443, Insurance Code.

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

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

15 (a-1) The client and the professional employer organization
16 shall specify in the professional employer services agreement
17 whether the parties have elected to obtain workers' compensation
18 insurance coverage for the covered employees and shall specify
19 which party must maintain coverage. If the license holder
20 maintains workers' compensation insurance coverage for the client,
21 an individual who is an executive employee, as described by Section
22 406.097, of the client is eligible to be treated as an executive
23 employee for premium calculation and classification purposes. A
24 copy of the professional employer services agreement must be
25 provided to the Texas Department of Insurance on request.
26 Information obtained by the Texas Department of Insurance under
27 this section is confidential and not subject to disclosure under

1 Chapter 552, Government Code.

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

7 (b) If a license holder maintains workers' compensation
8 insurance coverage for covered employees, the license holder shall
9 pay workers' compensation insurance premiums for the covered
10 employees based on the experience rating of the client [~~company~~]
11 for the first two years the covered employees are covered under the
12 professional employer organization's policy [~~client company has a~~
13 ~~contract with the license holder~~] and as further provided by rule by
14 the Texas Department of Insurance.

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

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

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

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

14 (1) the experience modifier of the client [~~company~~]
15 before being covered under the professional employer
16 organization's coverage [~~entering into the staff leasing~~
17 ~~arrangement~~]; or

18 (2) the experience modifier of the license holder at
19 the time the client's coverage under the professional employer
20 organization's coverage is [~~staff leasing arrangement~~] terminated.

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

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

1 a list of:

2 (1) claims associated with that client [~~company~~] made
3 against the license holder's workers' compensation policy; and

4 (2) payments made and reserves established on each
5 claim.

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

16 (1) received by the United States Postal Service; or

17 (2) personally delivered to the client [~~company~~].

18 SECTION 18. Sections 91.044, 91.046, 91.048, 91.050,
19 91.061, 92.012, and 201.030, Labor Code, are amended to read as
20 follows:

21 Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license
22 holder is the employer of a covered [~~an assigned~~] employee for
23 purposes of Subtitle A, Title 4, and, except for wages subject to
24 Section 91.032(c), for purposes of Chapter 61. In addition to any
25 other reports required to be filed by law, a license holder shall
26 report quarterly to the Texas Workforce Commission on a form
27 prescribed by the Texas Workforce Commission the name, address,

1 telephone number, federal income tax identification number, and
2 classification code as described in the "Standard Industrial
3 Classification Manual" published by the United States Office of
4 Management and Budget of each client [~~company~~].

5 (b) For purposes of Subtitle A, Title 4, in the event of the
6 termination of a contract between a license holder and a client
7 [~~company~~] or the failure by a professional employer organization
8 [~~staff-leasing entity~~] to submit reports or make tax payments as
9 required by that subtitle, the contracting client [~~company~~] shall
10 be treated as a new employer without a previous experience record
11 unless that client [~~company~~] is otherwise eligible for an
12 experience rating.

13 Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is
14 responsible for the license holder's contractual duties and
15 responsibilities to manage, maintain, collect, and make timely
16 payments for:

- 17 (1) insurance premiums;
 - 18 (2) benefit and welfare plans;
 - 19 (3) other employee withholding; and
 - 20 (4) any other expressed responsibility within the
- 21 scope of the professional employer services agreement [~~contract~~]
22 for fulfilling the duties imposed under this section and Sections
23 91.032, 91.047, and 91.048.

24 Sec. 91.048. REQUIRED INFORMATION. Each license holder
25 shall:

- 26 (1) maintain adequate books and records regarding the
- 27 license holder's duties and responsibilities;

1 (2) maintain and make available at all times to the
2 executive director the following information, which shall be
3 treated as proprietary and confidential and is exempt from
4 disclosure to persons other than other governmental agencies having
5 a reasonable, legitimate purpose for obtaining the information:

6 (A) the correct name, address, and telephone
7 number of each client [~~company~~];

8 (B) each professional employer services
9 agreement with a client [~~company contract~~]; and

10 (C) a listing by classification code as described
11 in the "Standard Industrial Classification Manual" published by the
12 United States Office of Management and Budget, of each client
13 [~~company~~];

14 (3) notify the department of any addition or deletion
15 of a controlling person as listed on the license application or
16 renewal form by providing the name of the person not later than the
17 45th day after the date on which the person is added or deleted as a
18 controlling person; and

19 (4) provide a biographical history to the department
20 in connection with the addition of a new controlling person.

21 Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For
22 the purpose of determining tax credits, grants, and other economic
23 incentives provided by this state or other governmental entities
24 that are based on employment, covered [~~assigned~~] employees are
25 considered employees of the client and the client is solely
26 entitled to the benefit of any tax credit, economic incentive, or
27 other benefit arising from the employment of covered [~~assigned~~]

1 employees of the client. This subsection applies even if the
2 professional employer organization [~~staff leasing services~~
3 ~~company~~] is the reporting employer for federal income tax purposes.

4 (b) If a grant or the amount of any incentive described by
5 Subsection (a) is based on the number of employees, each client
6 shall be treated as employing only those [~~assigned~~] employees
7 coemployed [~~co-employed~~] by the client. Covered [~~Assigned~~]
8 employees working for other clients of the professional employer
9 organization [~~staff leasing services company~~] may not be included
10 in the computation.

11 (c) Each professional employer organization [~~staff leasing~~
12 ~~services company~~] shall provide, on the request of a client or an
13 agency of this state, employment information reasonably required by
14 the state agency responsible for the administration of any tax
15 credit or economic incentive described by Subsection (a) and
16 necessary to support a request, claim, application, or other action
17 by a client seeking the tax credit or economic incentive.

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

19 (1) engage in or offer professional employer [~~staff~~
20 ~~leasing~~] services without holding a license under this chapter as a
21 professional employer organization [~~staff leasing services~~
22 ~~company~~];

23 (2) use the name, [~~or~~] title, or designation
24 "professional employer organization," "PEO," "staff leasing
25 company," "employee leasing company," "licensed professional
26 employer organization," "professional employer organization
27 services company," "professional employer organization company,"

1 [~~"licensed staff leasing company," "staff leasing services~~
2 ~~company," "professional employer organization,"~~ or
3 "administrative employer" or otherwise represent that the entity is
4 licensed under this chapter unless the entity holds a license
5 issued under this chapter;

6 (3) represent as the person's own the license of
7 another person or represent that a person is licensed if the person
8 does not hold a license;

9 (4) give materially false or forged evidence to the
10 department in connection with obtaining or renewing a license or in
11 connection with disciplinary proceedings under this chapter; or

12 (5) use or attempt to use a license that has expired or
13 been revoked.

14 Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This
15 chapter does not apply to:

16 (1) a temporary skilled labor agency;

17 (2) a professional employer organization [~~staff~~
18 ~~leasing services company~~];

19 (3) an employment counselor;

20 (4) a talent agency;

21 (5) a labor union hiring hall;

22 (6) a temporary common worker employer that does not
23 operate a labor hall;

24 (7) a labor bureau or employment office operated by a
25 person for the sole purpose of employing an individual for the
26 person's own use; or

27 (8) an employment service or labor training program

1 provided by a governmental entity.

2 Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION [~~STAFF~~
3 ~~LEASING SERVICES COMPANY~~]. For the purposes of this subtitle,
4 "professional employer organization" [~~"staff leasing services~~
5 ~~company"~~] has the meaning assigned by Section 91.001.

6 SECTION 19. Subsection (i), Section 207.045, Labor Code, is
7 amended to read as follows:

8 (i) A covered [~~An assigned~~] employee of a professional
9 employer organization [~~staff leasing services company~~] is
10 considered to have left the covered [~~assigned~~] employee's last work
11 without good cause if the professional employer organization [~~staff~~
12 ~~leasing services company~~] demonstrates that:

13 (1) at the time the employee's assignment to a client
14 [~~company~~] concluded, the professional employer organization [~~staff~~
15 ~~leasing services company~~], or the client [~~company~~] acting on the
16 professional employer organization's [~~staff leasing services~~
17 ~~company's~~] behalf, gave written notice and written instructions to
18 the covered [~~assigned~~] employee to contact the professional
19 employer organization [~~staff leasing services company~~] for a new
20 assignment; and

21 (2) the covered [~~assigned~~] employee did not contact
22 the professional employer organization [~~staff leasing services~~
23 ~~company~~] regarding reassignment or continued employment; provided
24 that the covered [~~assigned~~] employee may show that good cause
25 existed for the covered [~~assigned~~] employee's failure to contact
26 the professional employer organization [~~staff leasing services~~
27 ~~company~~].

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

3 Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION
4 [~~STAFF LEASING SERVICES COMPANY~~] WORKERS' COMPENSATION CLAIM AND
5 PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION.

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

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

11 (a-1) Except as provided by Subsection (c), a [~~staff leasing~~
12 ~~services company~~] license holder commits a violation if the license
13 holder fails to provide the information required by Sections
14 91.042(g) and (h).

15 (c) A [~~staff leasing services company~~] license holder does
16 not commit an administrative violation under this section if the
17 license holder requested the information required by Sections
18 91.042(g) and (h) from the license holder's workers' compensation
19 insurance provider and the provider does not provide the
20 information to the license holder within the required time. A
21 license holder shall notify the Texas Department of Insurance of a
22 provider's failure to comply with the requirements of Section
23 2051.151, Insurance Code.

24 SECTION 22. Section 151.057, Tax Code, is amended to read as
25 follows:

26 Sec. 151.057. SERVICES BY EMPLOYEES. The following
27 services are not taxable under this chapter:

1 (1) a service performed by an employee for his
2 employer in the regular course of business, within the scope of the
3 employee's duties, and for which the employee is paid his regular
4 wages or salary;

5 (2) a service performed by an employee of a temporary
6 employment service as defined by Section 93.001, Labor Code, for an
7 employer to supplement the employer's existing work force on a
8 temporary basis, when the service is normally performed by the
9 employer's own employees, the employer provides all supplies and
10 equipment necessary, and the help is under the direct or general
11 supervision of the employer to whom the help is furnished; or

12 (3) a service performed by covered [~~assigned~~]
13 employees of a professional employer organization [~~staff-leasing~~
14 ~~company~~], either licensed under Chapter 91, Labor Code, or exempt
15 from the licensing requirements of that chapter, for a client
16 [~~company~~] under a written contract that provides for shared
17 employment responsibilities between the professional employer
18 organization [~~staff-leasing company~~] and the client [~~company~~] for
19 the covered [~~assigned~~] employees, most of whom must have been
20 previously employed by the client [~~company~~]. The comptroller shall
21 prescribe by rule the minimum percentage of covered [~~assigned~~]
22 employees that must have been previously employed by the client
23 [~~company~~], the minimum time period the covered [~~assigned~~] employees
24 must have been employed by the client [~~company~~] prior to the
25 commencement of its contract, and such other criteria as the
26 comptroller may deem necessary to properly implement this section.

27 SECTION 23. Section 171.0001, Tax Code, is amended by

1 amending Subdivisions (6) and (15) and adding Subdivision (8-a) to
2 read as follows:

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

4 (A) a client as that term is defined by Section
5 91.001 [~~person that contracts with a license holder under Chapter~~
6 ~~91~~], Labor Code[, ~~and is assigned employees by the license holder~~
7 ~~under that contract~~]; or

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

12 (8-a) "Covered employee" has the meaning assigned by
13 Section 91.001, Labor Code.

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

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

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

21 SECTION 24. Subsection (b), Section 171.101, Tax Code, is
22 amended to read as follows:

23 (b) Notwithstanding Subsection (a)(1)(B)(ii), a
24 professional employer organization [~~staff leasing services~~
25 ~~company~~] may subtract only compensation as determined under Section
26 171.1013.

27 SECTION 25. Subsection (k), Section 171.1011, Tax Code, is

1 amended to read as follows:

2 (k) A taxable entity that is a professional employer
3 organization [~~staff leasing services company~~] shall exclude from
4 its total revenue payments received from a client [~~company~~] for
5 wages, payroll taxes on those wages, employee benefits, and
6 workers' compensation benefits for the covered [~~assigned~~]
7 employees of the client [~~company~~].

8 SECTION 26. Subsections (d) and (e), Section 171.1013, Tax
9 Code, are amended to read as follows:

10 (d) A taxable entity that is a professional employer
11 organization [~~staff leasing services company~~]:

12 (1) may not include as wages or cash compensation
13 payments described by Section 171.1011(k); and

14 (2) shall determine compensation as provided by this
15 section only for the taxable entity's own employees that are not
16 covered [~~assigned~~] employees.

17 (e) Subject to the other provisions of this section, in
18 determining compensation, a taxable entity that is a client
19 [~~company~~] that contracts with a professional employer organization
20 [~~staff leasing services company~~] for covered [~~assigned~~] employees:

21 (1) shall include payments made to the professional
22 employer organization [~~staff leasing services company~~] for wages
23 and benefits for the covered [~~assigned~~] employees as if the covered
24 [~~assigned~~] employees were actual employees of the entity;

25 (2) may not include an administrative fee charged by
26 the professional employer organization [~~staff leasing services~~
27 ~~company~~] for the provision of the covered [~~assigned~~] employees; and

1 (3) may not include any other amount in relation to the
2 covered [~~assigned~~] employees, including payroll taxes.

3 SECTION 27. Section 171.2125, Tax Code, is amended to read
4 as follows:

5 Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN
6 PROFESSIONAL EMPLOYER SERVICES [~~STAFF LEASING~~] ARRANGEMENTS. In
7 calculating cost of goods sold or compensation, a taxable entity
8 that is a client [~~company~~] of a professional employer organization
9 [~~staff leasing services company~~] shall rely on information provided
10 by the professional employer organization [~~staff leasing services~~
11 ~~company~~] on a form promulgated by the comptroller or an invoice.

12 SECTION 28. The following laws are repealed:

13 (1) Subdivision (2), Section 91.001, Labor Code;

14 (2) Section 91.043, Labor Code; and

15 (3) Subdivision (2), Section 171.0001, Tax Code.

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

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

26 (c) Subsection (c-1), Section 91.042, Labor Code, as added
27 by this Act, is not intended to change the interpretation of Section

1 462.308, Insurance Code, but is intended to clarify the application
2 of that section.

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

6 SECTION 30. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1286 passed the Senate on April 4, 2013, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 7, 2013, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1286 passed the House, with amendment, on April 26, 2013, by the following vote: Yeas 138, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor