

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS

Introduced By: Representatives Winfield, Menard, Slater, and Reilly

Date Introduced: February 11, 2004

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "Businesses and Professions" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 75

4 PROFESSIONAL EMPLOYER ORGANIZATIONS ACT OF 2004

5 **5-75-1. Legislative finding.** – The legislature finds that: (a) Professional employer
6 organizations provide a valuable service to commerce and the citizens of this state by increasing
7 the opportunities of employers to develop cost-effective methods of satisfying their personnel
8 requirements and providing employees with access to certain employment benefits which might
9 otherwise not be available them;

10 (b) Professional employer organizations operating in this state should be properly
11 recognized and regulated by the division of taxation, as provided in this chapter and section 44-
12 30-71.4; and

13 (c) Any allocation of the employer duties and responsibilities pursuant to this chapter will
14 preserve all rights to which covered employees would be entitled under a traditional employment
15 relationship.

16 **5-75-2. Definitions.** – As used in this chapter:

17 (a) "Administrative fee" means the fee charged to a client by a professional employer
18 organization for professional employer services. The administrative fee shall not be deemed to
19 include any amount of a fee by the professional employer organization that is for wages and

1 salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid
2 by the professional employer organization to or on behalf of covered employees under the
3 professional employer agreement.

4 (b) "Client" means any person who enters into a professional employer agreement with a
5 PEO.

6 (c) "Co-employer" means either a PEO or a client.

7 (d) "Co-employment relationship" shall mean:

8 (1) As between co-employers, a relationship whereby the rights, duties, and obligations
9 of an employer which arise out of an employment relationship have been allocated between co-
10 employers pursuant to a professional employer agreement and this chapter and which is intended
11 to be an ongoing relationship, rather than a temporary or project specific relationship;

12 (2) As between each PEO and a covered employee as to which a professional employer
13 agreement applies, an employment relationship whereby such PEO is entitled to enforce those
14 rights, and obligated to perform those duties and obligations, allocated to such PEO by the
15 professional employer agreement and this chapter;

16 (3) As between each client and a covered employee to which a professional employer
17 agreement applies an employment relationship whereby such client is entitled to enforce those
18 rights, and obligated to provide and perform those employer obligations allocated to such client
19 by the professional employer agreement and this chapter and whereby such client is responsible
20 for any employer right or obligation not otherwise allocated by the professional employer
21 agreement or this chapter;

22 (4) As to rights enforceable by an employee under state law, covered employees shall be
23 entitled to enforce against the PEO those rights: (i) allocated to such PEO by the professional
24 employer agreement and this chapter; or (ii) shared by the PEO and the client and the PEO under
25 the professional employer agreement and this chapter. All other rights, duties and obligations
26 enforceable by an employee under the state shall continue to be enforceable against the client
27 pursuant to state law.

28 (e) "Covered employee" means an individual having a co-employment relationship with a
29 PEO and a client who meets all of the following criteria: (1) the individual has executed an
30 employment agreement with the PEO; (2) the individual is a party to a co-employment
31 relationship with a PEO and a client; and (3) the individual's co-employment relationship is
32 pursuant to a professional employer agreement subject to this chapter. Individuals who are
33 officers, directors, shareholders, partners, and managers of the client will be covered employees
34 to the extent the PEO and the client have expressly agreed in the professional employer

1 agreement that such individuals would be covered employees and provided such individuals meet
2 the criteria of this paragraph and act as operational managers or perform services for the client.

3 (f) “Department” means the department of administration, division of taxation.

4 (g) “Director” means the tax administrator.

5 (h) “Person” means any individual, partnership, corporation, limited liability company,
6 association, or any other form of legally recognized entity.

7 (i) “Professional employer agreement” means a written contract by and between a client
8 and a PEO that provides:

9 (1) for the co-employment of covered employees;

10 (2) for the allocation and sharing between the client and the PEO employer
11 responsibilities (including hiring, firing and disciplining) with respect to the covered employees;
12 and

13 (3) that the PEO and the client assume the responsibilities required by this chapter.

14 (j) “Professional employer organization” or “PEO” means any person engaged in the
15 business of providing professional employer services. A person engaged in the business of
16 providing professional employer services shall be subject to registration under this chapter
17 regardless of its use of the term “professional employer organization,” “PEO,” “staff leasing
18 company,” “registered staff leasing company,” “employee leasing company,” or any other name.

19 The following shall not be deemed to be professional employer organizations or
20 professional employment services for purposes of this chapter:

21 (1) Arrangements wherein a person, whose principal business activity is not entering into
22 professional employer arrangements and which does not hold itself out as a PEO, shares
23 employees with a commonly owned company within the meaning of sections 414(b) and (c) of
24 the Internal Revenue Code of 1986, as amended;

25 (2) Arrangements by which a person assumes responsibility for the product produced or
26 service performed by such person or his/her agents and retains and exercises primary direction
27 and control over the work performed by the individuals whose services are supplied under such
28 arrangements; or

29 (3) Providing temporary help services.

30 (k) “Professional Employer Services” shall mean the service of entering into co-
31 employment relationships under this chapter in which all or a majority of the employees
32 providing services to a client or to a division or work unit of client are covered employees.

33 (l) “Registrant” means a PEO registered under this chapter.

34 (m) “temporary help services” means a service consisting of a person:

- 1 (1) Recruiting and hiring its own employees;
- 2 (2) Finding other organizations that need the services of those employees;
- 3 (3) Assigning those employees to perform work at or services for the other organizations
4 to support or supplement the other organizations' workforces, or to provide assistance in special
5 work situations such as, but not limited to, employee absences, skill shortages, seasonal
6 workloads, or to perform special assignments or projects, and
- 7 (4) Customarily attempting to reassign the employees to other organizations when they
8 finish each assignment.

9 **5-75-3. Rights, duties and obligations unaffected by this chapter. -** (a) Collective
10 bargaining agreements. Nothing in this chapter or in any professional employer agreement shall
11 affect, modify or amend any collective bargaining agreement, or the rights or obligations of any
12 client, PEO, or covered employee under the federal National Labor Relations Act, the federal
13 Railway Labor Act or the State of Rhode Island Labor Relations Act.

14 (b) Licensing. Nothing contained in this chapter or any professional employer agreement
15 shall affect, modify or amend any state, local, or federal licensing, registration, or certification
16 requirement applicable to any client or covered employee.

17 (1) A covered employee who must be licensed, registered, or certified according to law or
18 regulation is deemed solely an employee of the client for purposes of any such license,
19 registration, or certification requirement.

20 (2) A PEO shall not be deemed to engage in any occupation, trade, profession, or other
21 activity that is subject to licensing, registration, or certification requirements, or is otherwise
22 regulated by a governmental entity solely by entering into and maintaining a co-employment
23 relationship with a covered employee who is subject to such requirements or regulations.

24 (3) Unless otherwise expressly agreed to by the client in the professional employer
25 agreement, a client shall have the sole right to direct and control the professional or licensed
26 activities of covered employees and of client's business.

27 (c) Tax credits and other incentives. For purposes of determination of tax credits and
28 other economic incentives provided by this state and based on employment, covered employees
29 shall be deemed employees solely of the client. A client shall be entitled to the benefit of any tax
30 credit, economic incentive, or other benefit arising as the result of the employment of covered
31 employees of such client. If the grant or amount of any such incentives is based on number of
32 employees, then each client shall be treated as employing only those covered employees actually
33 working in the client's business operations and covered employees working for other clients of
34 the PEO shall not be counted. Each PEO will provide, upon request by a client or an agency or

1 department of this state, employment information reasonably required by any agency or
2 department of this state responsible for administration of any such tax credit or economic
3 incentive and necessary to support any request, claim, application, or other action by a client
4 seeking any such tax credit or economic incentive. To the extent the client is receiving such
5 benefit, the PEO shall not be entitled to receive such benefit or incentive.

6 (d) Disadvantage business. With respect to a bid, contract, purchase order, or agreement
7 entered into with the state or a political subdivision of the state, a client company's status or
8 certification as a small, minority-owned, disadvantage, or woman-owned business enterprise or as
9 an historically underutilized business is not affected because the client company has entered into
10 an agreement with a registrant or uses the services of a registrant.

11 **5-75-4. Registration requirements.** - (a) Registration required. Except as otherwise
12 provided in this chapter, no person shall provide, advertise, or otherwise hold itself out as
13 providing professional employer services in this state, unless such person is registered under this
14 chapter and in conformance with the requirements of section 43-30-71.4.

15 (b) Registration information. Each applicant for registration under this chapter, shall
16 provide the division of taxation with the following information:

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

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

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

21 (4) A list by jurisdiction of each name under which the PEO has operated in the
22 preceding five (5) years, including any alternative names, names of predecessors and, if known,
23 successor business entities;

24 (5) A statement of ownership, which shall include the name and evidence of the business
25 experience of any person that, individually or acting in concert with one or more other persons,
26 owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests
27 of the PEO;

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

31 (7) A list of clients including client name, physical address, telephone number and federal
32 identification number.

33 (c) Initial Registration.

34 (1) Each PEO operating within this state as of the effective date of this chapter shall

1 complete its initial registration not later than one hundred eighty (180) days after the effective
2 date of this chapter. Such initial registration shall be valid through the subsequent July 31 of the
3 registration year.

4 (2) Each PEO not operating within this state as of the effective date of this chapter shall
5 complete its initial registration prior to commencement of operations within this state.

6 (d) Renewal. On August 1st of each subsequent year such registrant shall renew its
7 registration by notifying the division of taxation of any changes in the information provided in
8 such registrant's most recent registration or renewal which shall be effective for an annual term
9 from August 1 through July 31 of the subsequent year.

10 (e) Group registration. Any two or more PEO's held under common control of any other
11 person or persons acting in concert may be registered as a PEO Group. A PEO group may satisfy
12 any reporting and financial requirements of this registration law on a consolidated basis.

13 (f) Alternative Registration. The division of taxation may by rule and regulation provide
14 for the acceptance of an affidavit or certification of a bonded, independent and qualified
15 assurance organization that has been approved by the department certifying qualifications of a
16 professional employer organization in lieu of the requirements of sections 4 and 6 of this chapter.

17 (g) List. The state tax administrator shall maintain a list of professional employer
18 organizations registered under this chapter.

19 (h) Forms. The state tax administrator may prescribe forms necessary to promote the
20 efficient administration of this section.

21 (i) Record confidentiality. All records, reports and other information obtained from a
22 PEO under this chapter, except to the extent necessary for the proper administration of this
23 chapter by the state tax administrator, shall be confidential and shall not be published or open to
24 public inspection other than to public employees in the performance of their public duties.

25 **5-75-5. Fees. -- (a) Initial registration. Upon filing an initial registration statement under**
26 **this chapter, a PEO shall pay an annual initial registration fee not to exceed five hundred dollars**
27 **(\$500). Such fee shall be prorated based upon an expiration date of July 31.**

28 **(b) Renewal. Upon each annual renewal of a registration statement filed under this**
29 **chapter, a PEO shall pay a renewal fee not to exceed two hundred fifty dollars (\$250).**

30 **(c) Limited registration. Each PEO seeking limited registration under the terms of this**
31 **subsection, shall pay a fee in the amount not to exceed two hundred fifty dollars (\$250) upon**
32 **initial application for limited registration and upon each annual renewal of such limited**
33 **registration.**

34 **(d) Alternative registration. A PEO seeking alternative registration shall pay an initial and**

1 annual fee not to exceed two hundred fifty dollars (\$250). Such fee to be prorated based upon an
2 expiration date of July 31.

3 (e) The state tax administrator shall determine, by rule, any other fee to be charged under
4 this chapter. Such fees shall not exceed those reasonably necessary for the administration of the
5 registration chapter. Such fees shall not exceed those reasonably necessary for the administration
6 of the registration process.

7 **5-75-6. Financial capability. Net worth and bonding.** – Each PEO shall maintain a
8 bond or securities with a minimum market value of fifty thousand dollars (\$50,000) held by a
9 depository designated by the department securing payment by the PEO of all taxes, wages,
10 benefits or other entitlement due to or with respect to covered employees, if the PEO does not
11 make such payments when due. A PEO registered under this chapter and certified by the division
12 of taxation for at least two (2) years shall be exempt from the bonding requirements of this
13 section.

14 **5-75-7. General requirements and provisions .** -- (a) Contractual relationship. Except
15 as specifically provided in this chapter, the co-employment relationship between the client and
16 the PEO, and between each co-employer and each covered employee, shall be governed by the
17 professional employer agreement.

18 (1) Nothing contained in any professional employer agreement or this chapter shall be
19 deemed to:

20 (i) Diminish, abolish or remove rights of covered employees as to clients or obligations
21 of such client as to a covered employee, existing prior to the effective date of a professional
22 employer agreement.

23 (ii) Terminate an employment relationship existing prior to the effective date of a
24 professional employer agreement.

25 (iii) Create any new or additional enforceable right of a covered employee against a PEO
26 not specifically allocated to such PEO in the professional employer agreement or this chapter.

27 (2) Each professional employer agreement shall include the following:

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

32 (ii) The PEO shall have responsibility to pay wages to covered employees; to withhold,
33 collect, report and remit payroll-related and unemployment taxes; and, to the extent the PEO has
34 assumed responsibility in the professional employer agreement, to make payments for employee

1 benefits for covered employees. As used in this section, the term "wages" does not include any
2 obligation between a client and a covered employee for payments beyond or in addition to the
3 covered employee's salary, draw or regular rate of pay, such as bonuses, commissions, severance
4 pay, deferred compensation, profit sharing or vacation, sick or other paid time-off pay, unless the
5 PEO has expressly agreed to assume liability for such payments in the professional employer
6 agreement;

7 (iii) The PEO shall have the responsibility to withhold, collect, report and remit payroll
8 related and unemployment taxes. For purposes of chapters 39-41 (Rhode Island Temporary
9 Disability Insurance Act) and chapters 42-44 (Employment Security Act) of title 28, and this
10 section, the term "wages" shall be defined in accordance with section 28-42-3 (28).

11 (iv) PEO and the client shall both have a right to hire, terminate and discipline the
12 covered employees; and

13 (v) The responsibility to obtain workers' compensation coverage for covered employees,
14 from a carrier licensed to do business in this state and otherwise in compliance with all applicable
15 requirements, shall be specifically allocated to either the client or the PEO in the professional
16 employer agreement.

17 (b) Allocation of rights, duties, and obligations. Except as specifically provided in this
18 chapter or in the professional employer agreement, in each co-employment relationship:

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

22 (2) The PEO shall be entitled to exercise only those rights, and obligated to perform only
23 those duties and responsibilities, specifically required by this chapter or set forth PEO as co-
24 employer with respect to any covered employee shall be limited to those arising pursuant to the
25 professional employer agreement and this chapter during the term of co-employment by the PEO
26 of such covered employee.

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

32 (c) Notice to covered employees. With respect to each professional employer agreement
33 entered into by a PEO, such PEO shall provide written notice to each covered employee affected
34 by such agreement of the general nature of the co-employment relationship between and among

1 the PEO, the client, and such covered employee. Such notice shall include notice to employees of
2 the client's and the PEO's obligations under section 7 (D) (4) below.

3 (d) Limitations on liability. Except to the extent otherwise expressly provided by the
4 applicable professional employer agreement:

5 (1) A client shall be solely responsible for the quality, adequacy or safety of the goods or
6 services produced or sold in client's business.

7 (2) A client shall be solely responsible for directing, supervising, training and controlling
8 the work of the covered employees with respect to the business activities of the client and solely
9 responsible for the acts, errors or omissions of the covered employees with regard to such
10 activities.

11 (3) A client shall not be liable for the acts, errors or omissions of a PEO, or of any
12 covered employee of the client and a PEO when such covered employee is acting under the
13 express direction and control of the PEO.

14 (4) Nothing in this subsection shall serve to limit any contractual liability or obligation
15 specifically provided in a professional employer agreement, nor shall this subsection in any way
16 limit the liabilities and obligations of any PEO or client as defined elsewhere in this chapter.

17 (5) A covered employee is not, solely as the result of being a covered employee of a
18 PEO, an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety
19 bonds, employer's liability which is not covered by workers' compensation, or liquor liability
20 insurance carried by the PEO unless the covered employees are included by specific reference in
21 the professional employer agreement and applicable prearranged employment contract, insurance
22 contract or bond.

23 (e) Services not insured. A registrant under this chapter is not engaged in the sale of
24 insurance by offering, marketing, selling, administering or providing PEO services or employee
25 benefit plans for covered employees.

26 (f) Taxation:

27 (1) Covered employees whose services are subject to sales tax shall be deemed
28 employees of the client for purposes of collecting and levying sales tax on the services performed
29 by the covered employee. Nothing contained in this chapter shall relieve a client of any sales tax
30 liability with respect to its goods or services.

31 (2) Any tax upon professional employer services shall be limited to the administrative
32 fee.

33 (3) Any tax assessed on a per capita or per employee basis shall be assessed against the
34 client for covered employees and against the professional employer organization for its

1 employees who are not covered employees co-employed with a client.

2 (4) In the case of tax imposed or calculated upon the basis of total payroll, the
3 professional employer organization shall be eligible to apply any small business allowance or
4 exemption available to the client for the covered employees for purpose of computing the tax.

5 **5-75-8. Benefit plans.** – (a) A client and a PEO shall each be deemed an employer for
6 purposes of sponsoring retirement and welfare benefit plans for its covered employees.

7 (b) A fully-insured welfare benefit plan offered to he covered employees of a single PEO
8 shall be considered a single employer welfare benefit plan.

9 (c) For purposes of determining employer status under chapter 27-50 (entitled the Rhode
10 Island Small Employer Health Insurance Availability Act), a PEO shall be considered the
11 employer of all of its covered employees and all covered employees of one or more clients
12 participating in a health benefit plan sponsored by a single PEO shall be considered employees of
13 the PEO.

14 (d) If a PEO offers to its covered employees any health benefit plan which is not fully-
15 insured by an authorized insurer, the plan shall:

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

17 (2) Hold all plan assets, including participant contributions, in a trust account; and

18 (3) Provide sound reserves for such plan as determined using generally accepted actuarial
19 standards.

20 **5-75-9. Workers' compensation.** – (a) The responsibility to obtain workers'
21 compensation coverage for covered employees, from a carrier licensed to do business in this state
22 and otherwise in compliance with all applicable requirements, shall be specifically allocated in
23 the professional employer agreement to either the client or the PEO. If such responsibility is
24 allocated to the PEO under any such agreement, such agreement shall require that the PEO
25 maintain and provide to client, at the termination of the agreement if requested by the client,
26 records regarding the loss experience related to workers' compensation insurance provided to
27 covered employees pursuant to such agreement.

28 (b) Workers' compensation. Both client and the PEO shall be considered the employer
29 for the purpose of coverage under the workers' compensation act and both the PEO and its client
30 shall be entitled to protection of the exclusive remedy provision of the workers' compensation act
31 irrespective of which co-employer obtains such workers' compensation coverage.

32 **5-75-10. Unemployment compensation insurance.** - - (a) For purposes of chapters 39-
33 41 (Rhode Island Temporary Disability Insurance Act) and chapters 42-44 (Employment Security
34 Act) of title 28 only, the client company shall be considered to be an employer of its covered

1 employees under any agreement with a professional employer organization established under this
2 chapter; provided, that the professional employer organization shall report and pay all required
3 unemployment contributions using the client company's state employer account number at the
4 client company's experience rate as determined under section 28-43-8, or at the new employer
5 rate established under section 28-43-8.3 if the client company does not qualify for an experience
6 rate under section 28-43-8.

7 (b) The client company and PEO shall be jointly and severally liable for all contributions,
8 finances, interest, penalties and withholdings due to the department of labor and training under
9 chapters 39-44, of title 28.

10 **5-75-11. Severability.** – The provisions of this chapter are severable. If any provision of
11 this chapter, or application thereof to any person or circumstance, is held invalid, such invalidity
12 shall not affect other provisions or applications of this chapter which can be given effect without
13 the invalid provision or application.

14 SECTION 2. This act shall take effect upon passage.

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LC01736/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS

- 1 This act would require that all professional employer organizations operating in Rhode
- 2 Island be registered and regulated by the division of taxation.
- 3 This act would take effect upon passage.

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