

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB579

Hearing Date: Monday February 02, 2009
Committee On: Business and Labor
Introducer: Cornett
One Liner: Adopt the Professional Employer Organization Registration Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Carlson, Council, Lathrop, McGill, Schilz, Wallman, White
Nay:
Absent:
Present Not Voting:

Proponents:
Senator Abbie Cornett
Michael Mapes
Steve Knuth
Adam Peer

Representing:
Introducer
The Alliance Group, Inc.
Ag West Commodities LLC
NAPEO

Opponents:

Representing:

Neutral:
Ann Frohman
Glen Morton
Korby Gilbertson

Representing:
Ne Dept. of Insurance
Ne Workers' Comp Court
National Council on Compensation Insurance

Summary of purpose and/or changes:
Adopts the Professional Employer Organization Registration Act.

Section 1 creates the Professional Employer Organization Registration Act.

Section 2 states Legislative findings that professional employer organizations ("PEOs") provide valuable cost-effective services, that such operations should be regulated by the Department of Labor, and that allocation of employer duties preserves an employee's rights they would be entitled to in traditional employment.

Section 3 defines client, co-employer, co-employment relationship, covered employee, Department, person, professional employer agreement, PEO, PEO group, professional employer services, registrant, temporary help services and working capital. Defines, for purposes of the Act, what is not a PEO or professional employment services.

Section 4 states that nothing in the Act affects any collective bargaining agreement or rights or obligations of any client, PEO or employee covered by the National Labor Relations Act or the Railway Labor Act. Clarifies that the Act does not diminish, abolish or remove rights or obligations existing prior to the effective date of the professional employer agreement. The Act does not affect, modify or amend contractual relationships in effect at the time of or subsequent to the professional employer agreement becomes effective. The Act does not create a new or separate enforceable right

against the PEO. The PEO has no responsibility or liability under existing or new contractual relationships unless agreed to in writing. Nothing in the Act affects state, local or federal licensing, registration or certification requirements. Covered employees who are required to be registered or certified by law are solely an employee of the client for purposes of such registration or certification. A professional employer agreement is not automatically deemed to engage in an occupation, trade or profession that is subject to licensing, registration or certification when the agreement is entered into with a covered employee who is subject to such regulations. The client is to have the sole right, subject to licensing, regulation and certification, to direct and control its employees' activities.

Covered employees belong to the client for tax or economic incentive purposes. PEOs are to provide, upon request, employment information. Any status or certification is not affected by entering into professional employer agreement.

Section 5 requires PEO registration. Applicants for registration are to provide certain identifying information, business history, management experience and financial information. Each PEO is to register within 180 days after the operative date of the ACT. PEO must renew its registration within 180 days after its fiscal year. Out of state PEO's must register before beginning operations. Allows for out of state limited registrations if certain conditions are met. Allows for group PEO registration. The Department of Labor is to maintain a PEO list, prescribe forms, and adopt rules concerning registration process. States that most PEO information is confidential.

Section 6 creates registration fees.

Section 7 except for limited registrants, requires positive working capital at time of registration or provide bond, irrevocable letter of credit or securities.

Section 8 discusses rights and duties in co-employment relationships including:

(1) client is entitled to exercise all rights and perform all duties otherwise applicable to an employer in an employment relationship; (2) PEO can only exercise those rights and perform those duties required by the Act or in the professional employer agreement and; (3) unless otherwise agreed in the professional employer agreement, the client retains the right to direct and control the covered employees, to discharge its fiduciary responsibilities and comply with licensure requirements.

States that employment relationships are to be governed by professional employer agreements. Each agreement must: (1) provide for the allocation of rights, duties and obligations; (2) require the PEO to pay wages and salaries, withhold necessary taxes and pay agreed upon benefits. Defines wages and limits the PEO's liability to pay fees outside the covered employee's salary unless the PEO assumed the responsibility in the professional employer agreement; (3) allow the PEO and client to have the right to hire, discipline and terminate a covered employee and; (4) provide worker's compensation coverage.

Requires the PEO to send covered employees written notification describing the nature of the co-employment relationship.

Unless otherwise provided under the professional employment agreement: (1) the client is responsible for the quality of its goods; (2) the client is responsible for directing its employees and is responsible for the employee's actions; (3) the client is not liable for acts, errors or omissions of a PEO or a covered employee acting at the direction of the PEO; (4) a covered employee is not considered an employee of the PEO for purposes of general liability insurance, fidelity bonds, surety bonds or other insurance carried by the PEO unless the covered employee is specifically referenced in the professional employer agreement.

A PEO registrant is not deemed to be selling insurance by offering, marketing, selling, administering or providing PEO services or employee benefit plans to covered employees.

For purposes of state and local taxes: (1) covered employees whose services are subject to sales tax are deemed employees of the client; (2) taxes imposed on professional employer services that are based on gross receipts shall allow for a deduction from the gross income that portion of the fee charged to a client that represents the actual cost of

wages and salaries, benefits, workers' compensation, payroll taxes and withholding of a covered employee by the PEO; (3) taxes assessed are assessed against the client for covered employees and against the PEO for its employees who are not covered employees co-employed with a client. Allows for a credit against the client's obligation if certain conditions are met; and (4) allows the PEO to use small business allowances or exemptions available to the client.

Section 9 states that both the client and PEO are employers for retirement and welfare benefit plan purposes. Provides guidelines for PEO self-insurance plans.

Section 10 states that the professional employer agreement is to allocate responsibility for workers' compensation coverage. Both the PEO and client are considered employers for purposes of the Nebraska Worker's Compensation Act.

Section 11 allows for disciplinary action if a PEO offers or provides services before registering or provides false or fraudulent information when registering under the Act.

Section 12 harmonizes definitional language in Neb. Rev. Stat. 48-602 to comport with the Act.

Section 13 harmonizes language in Neb. Rev. Stat. 48-648 to comport with the Act.

Section 14 provides an operative date of January 1, 2010.

Section 15 provides that any finding that a section is deemed unconstitutional, should have no bearing on the remaining sections.

Section 16 repeals Neb. Rev. Stat. 48-602 and Neb. Rev. Stat. 48-648.

Explanation of amendments:

AM 1323 strikes the legislative intent statement found in Section 1. Removes provisions that specifically allowed a PEO to sponsor self-funded health plans or workers' compensation coverage. Specifies that nothing in the act otherwise exempts a PEO from the requirements of insurance law (or regulations) and the Producer-Controlled Property and Casualty Insurer Act.

Requires the PEO client to post notice of the PEO relationship and certain workers' compensation information at the workplace.

AM 1323 provides guidelines for PEO sponsored workers' compensation policies including: (1) creating requirements, safeguards, and rule-making authority when there is less than a full workforce; (2) creating rule-making authority relating to data collection; (3) requiring certain information be provided to the workers' compensation court; (4) specifying that policy information must be provided to the client; (4) explaining that an insurer must be able to provide client-based information; (5) requiring that a safety committee be established; (6) specifying how workers' compensation coverage may end and what notices must be given. Cancellation is not effective unless there is compliance with the notice provisions and; allowing a client to withdraw from the PEO agreement after receipt of cancellation or nonrenewal notice.

AM 1323 additionally specifies that in actions, including those alleging civil rights violations, notice served to either the PEO or client shall be considered notice to both and such notice shall be transmitted to the one not served with notice.

Steve Lathrop, Chairperson