**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3575**

**STATUS INFORMATION**

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Introduced in the House on February 2, 2011

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: Professional Employer Organization Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/2/2011 House Introduced and read first time ([House Journal‑page 60](file:///h:\hj%20archive\2011\02-02-11.docx))

2/2/2011 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 60](file:///h:\hj%20archive\2011\02-02-11.docx))

**VERSIONS OF THIS BILL**

[2/2/2011](file:///p:\pprever\2011-12\3575_20110202.docx)

**A** **BILL**

TO AMEND CHAPTER 68, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY, TO REVISE THE CHAPTER TITLE, TO PROVIDE THE CHAPTER MAY BE CITED AS THE “SOUTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT”, TO PROVIDE CERTAIN DEFINITIONS, TO PROVIDE OBLIGATIONS OF THE DEPARTMENT OF CONSUMER AFFAIRS FOR LICENSING AND REGULATING PROFESSIONAL EMPLOYER SERVICE ORGANIZATIONS, TO PROVIDE LICENSING REQUIREMENTS AND PROCEDURES FOR A PROFESSIONAL EMPLOYER SERVICE ORGANIZATION, TO PROVIDE REQUIREMENTS FOR A CONTROLLING PERSON OF A PROFESSIONAL EMPLOYER SERVICE, TO PROVIDE CONTINUING EDUCATION REQUIREMENTS, TO IMPOSE CERTAIN LICENSE FEES AND PROVIDE FOR THEIR MANAGEMENT, TO REQUIRE ACCEPTANCE OF ELECTRONIC FILINGS IN CERTAIN CIRCUMSTANCES, TO PROVIDE LIMITS ON THE APPLICABILITY OF THE CHAPTER, TO REQUIRE AND PROVIDE SPECIFICATIONS FOR A PROFESSIONAL EMPLOYER SERVICES AGREEMENT BY WRITTEN CONTRACT BETWEEN THE LICENSEE AND THE CLIENT, TO PROVIDE CERTAIN REQUIREMENTS WITH RESPECT TO WORKERS’ COMPENSATION COVERAGE, TO PROVIDE FOR THE CREATION OF PROFESSIONAL EMPLOYER ORGANIZATION GROUPS, TO PERMIT THE DEPARTMENT TO ISSUE RESTRICTED LICENSES IN CERTAIN CIRCUMSTANCES, TO REQUIRE CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS ON A LICENSEE, TO IMPOSE CERTAIN PROVISIONS RELATED TO INCENTIVE OR BUSINESS PREFERENCE PROGRAMS, TO EXPRESS THE RELATIONSHIP BETWEEN THIS CHAPTER AND THE STATE LAW CONCERNING ILLEGAL ALIENS AND PRIVATE EMPLOYMENT, TO PROVIDE THE DEPARTMENT OF INSURANCE SHALL INVESTIGATE INSURANCE CLAIMS FILED WITH IT BY A LICENSEE, TO PROHIBIT CERTAIN CONDUCT RELATED TO THE PROFESSIONAL EMPLOYER SERVICES AND ORGANIZATIONS; AND TO AMEND SECTION 12‑54‑240, AS AMENDED, RELATING TO THE PROHIBITION OF CERTAIN DISCLOSURE OF RECORDS, REPORTS, AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE BY EMPLOYEES AND AGENTS OF THE DEPARTMENT AND OFFICE OF THE STATE AUDITOR, SO AS TO PROVIDE THE SECTION DOES NOT PROHIBIT DISCLOSURE OF CERTAIN INFORMATION RELATED TO PAYROLL WITHHOLDING TAXES OF BUSINESSES TO THE DEPARTMENT OF CONSUMER AFFAIRS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 68, Title 40 of the 1976 Code is amended to read:

“CHAPTER 68

~~Regulation of Professional Employer Organizations~~

~~Section 40-68-10.~~ ~~As used in this chapter:~~

~~(1) “Applicant” means a business seeking to be licensed under this chapter or seeking the renewal of a license under this chapter.~~

~~(2) “Client company” means a person that contracts with a licensee and is assigned employees by the licensee under that contract.~~

~~(3) “Administrator” means the administrator of the Department of Consumer Affairs.~~

~~(4) “Controlling person” means:~~

~~(a) an officer or director of a corporation seeking to offer professional employer services, a shareholder holding ten percent or more of the voting stock of a corporation seeking to offer professional employer services, or a partner of a partnership seeking to offer professional employer services;~~

~~(b) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company seeking to offer professional employer services through the ownership of voting securities, by contract or otherwise, and who is actively involved in the day‑to‑day management of the company; or~~

~~(c) an individual employed, appointed, or authorized by a business seeking to offer professional employer services to enter into a contractual relationship with a client company on behalf of the business.~~

~~(5) “Department” means the South Carolina Department of Consumer Affairs.~~

~~(6) “Insured health benefit plan”, for the purposes of this chapter, means a plan offered by an insurer licensed by the Department of Insurance.~~

~~(7) “Licensee” means a person licensed under this chapter as a professional employer organization to provide professional employer services. The term includes a professional employer services group licensed under Section 40‑68‑80.~~

~~(8) “Person” means an individual, association, corporation, partnership, or other private legal entity.~~

~~(9) “Professional employer services” means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are shared by the licensee 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 licensee. Professional employer services does not include temporary employees.~~

~~(10) “Professional employer organization” means an individual business entity that offers professional employer services.~~

~~(11) “Professional employer organization group” means a combination of professional employer services companies that operates under a group license issued under Section 40‑68‑80.~~

~~(12) “Assigned employee” means a person performing services for a client company as affected by a contract between a licensee and client company in which employment responsibilities are shared.~~

~~(13) “Entire work force” means all persons engaged by a client company and are employees as defined in Title 42 including persons considered employees under Sections 42‑1‑400, 42‑1‑410, and 42‑1‑420.~~

~~Section 40-68-20.~~ ~~The department shall adopt regulations necessary to administer this chapter. Regulations must be adopted in compliance with the Administrative Procedures Act. A licensee is governed and controlled by this chapter and the regulations adopted by the department.~~

~~Section 40-68-30.~~ ~~(A) A person may not engage in or offer professional employer services in this State without holding a license issued under this chapter. A person that desires a professional employer organization license shall file with the department a written application accompanied by an application fee of one hundred dollars for each controlling person. In addition, the application fee is two hundred dollars for each professional employer organization, and three hundred dollars for each professional employer organization group.~~

~~(B) The department may require an applicant for a license to provide information and certifications to determine whether the applicant meets the licensing requirements of this chapter and also whether individuals affiliated with the applicant are qualified to serve as controlling persons.~~

~~(C) A licensee or controlling person shall notify the department within thirty days of any felony conviction or civil judgment entered against the licensee or controlling person.~~

~~(D) An application for a professional employer organization group license under Section 40‑68‑80 must provide the information required by this chapter for each member of the group. An applicant or licensee is ineligible for a license for one year after the date of final departmental action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:~~

~~(1) an inadvertent error or omission in the application if that error or omission is promptly corrected;~~

~~(2) the experience documented to the department was insufficient at the time of the previous application;~~

~~(3) the department was unable to complete the criminal background investigation required under Section 40‑68‑40 because of insufficient information received from a local, state, or federal law enforcement agency; or~~

~~(4) that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable, if that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.~~

~~Section 40-68-40.~~ ~~(A) To be qualified to serve as a controlling person of a licensee under this chapter, a person must be at least eighteen years of age, be of good moral character, and have educational, managerial, or business experience relevant to:~~

~~(1) operation of a business entity offering professional employer services; or~~

~~(2) services as a controlling person of a professional employer organization.~~

~~For the purposes of this subsection, “good moral character” means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this State and nation.~~

~~(B) The department shall conduct a background investigation of each individual applicant and of each controlling person of each applicant and require fingerprinting of each applicant and each controlling person to determine whether the applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance or renewal of a license if it finds that a controlling person is not qualified under this chapter. The investigation shall include:~~

~~(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and~~

~~(2) examination by the department, if necessary, of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.~~

~~(C) Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license.~~

~~(D) A licensee shall maintain a registered agent for the service of process in this State.~~

~~(E) An applicant for an original or renewal license must demonstrate a net worth of at least fifty thousand dollars. The applicant shall demonstrate the net worth to the department by providing the department with the applicant’s audited financial statement. The net worth requirement also may be satisfied through guarantees, letters of credit, or other security acceptable to the department in a combined total amount of at least fifty thousand dollars. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty. For applicants operating a professional employer organization or professional employer organization group on or before January 1, 1991, the net worth requirement will be satisfied by the documentation of a positive net worth.~~

~~(F) A document submitted to establish net worth must reflect the net worth as of a date not earlier than six months before the date on which the application is submitted, and must be prepared by a certified public accountant. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.~~

~~(G)(1) An applicant and any controlling person must have at least two years of other related industry experience as approved by the department before the initial license is issued.~~

~~(2) Notwithstanding subsection (G)(1), an applicant for a nonresident restricted license under Section 40‑68‑90 may be issued a license without the necessary two years’ experience.~~

~~(3) However, all licensees filed before September 30, 2005, may act as professional employment organizations after that date without regard to the experience requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40‑68‑45 and otherwise comply with this chapter.~~

~~Section 40-68-45.~~ ~~(A)(1) Effective for license years beginning after September 30, 2005, key management personnel of all licensees must complete at least eight hours of continuing professional education annually.~~

~~(2) For purposes of this subsection:~~

~~(a) if the licensee is a sole proprietorship or partnership, “key personnel” means any controlling person, as defined in this chapter, of that licensee.~~

~~(b) if the licensee is a corporation, “key personnel” means any person who both:~~

~~(i) possesses the power to direct or cause the direction of the management of a company seeking to offer professional employment services in this State; and~~

~~(ii) is directly responsible for the day‑to‑day management of the company’s operations in this State.~~

~~(3) The holder of a nonresident restricted license under Section 40‑68‑90 is not required to complete the continuing education required by this subsection.~~

~~(4) Up to eight hours of continuing professional education may be carried forward from one year to the next year; for the license year beginning September 30, 2005, up to eight hours of continuing professional education taken in the preceding twelve months may be carried forward.~~

~~(B)(1) Continuing professional education must be reported to the department annually on a form approved by the department showing the date and title of the courses taken, the teacher or sponsor of the course, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equals one hour of continuing professional education. Course sponsors shall maintain records of attendees for two years after the course.~~

~~(2) Documentation of attendance at the courses or correspondence courses must be maintained by the licensee and must consist of a certificate of completion issued by the teacher or sponsor of the course showing the number of hours of continuing professional education completed. This documentation is subject to inspection by the department for up to two years after the date of the course. Courses offered by the National Association of Professional Employer Organizations, the Carolina Chapter of Professional Employer Organizations, the department, or other approved courses related to employment, are considered qualified courses for continuing professional education. The department shall offer continuing professional education courses to assist licensees and controlling persons in obtaining the continuing professional education required by this chapter.~~

~~(3) The department shall appoint four licensees or controlling persons and one representative of the department to a panel for two‑year terms to approve any courses questioned as to their qualifications as continuing professional education. The panel may conduct its meetings via conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.~~

~~(4) If a licensee fails to complete his continuing professional education in a timely manner, his license expires and the licensee shall pay a penalty not in excess of one hundred dollars in order to renew the license. If a controlling person, who is not an owner or officer, of a licensee fails to complete his continuing professional education in a timely manner, he may not continue as a controlling person. However, the licensee or controlling person may request an administrative hearing to appeal the expiration of his license, or controlling person status, respectively, for failure to complete continuing professional education requirements. A license may be renewed without penalty within thirty days after its expiration if the licensee completes his professional education requirement. If a licensee fails to complete his professional education requirement within thirty days after the expiration of his license, he shall, in addition to paying the penalty provided for in this subsection, complete his professional education requirements prior to filing a new initial application for a license.~~

~~Section 40-68-50.~~ ~~(A) An applicant for an original or renewal license shall pay a fee to the department on the issuance of the license or license renewal. License fees are assessed as follows:~~

~~(1) in the first year of the biennium:~~

~~(a) two thousand dollars for a resident professional employer organization;~~

~~(b) four thousand dollars for a resident professional employer organization group;~~

~~(c) two thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for a nonresident professional employer organization;~~

~~(d) four thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is ten thousand dollars for each nonresident professional employer organization group;~~

~~(2) in the second year of the biennium:~~

~~(a) one thousand dollars for each resident professional employer organization;~~

~~(b) three thousand five hundred dollars for each resident professional employer organization group;~~

~~(c) one thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is two thousand five hundred dollars for a nonresident professional employer organization;~~

~~(d) three thousand five hundred dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for each nonresident professional employer organization group;~~

~~(3) for renewal licenses:~~

~~(a) fifteen hundred dollars for a professional employer organization;~~

~~(b) three thousand dollars for a professional employer organization group;~~

~~(c) fifteen hundred dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident leasing company imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is three thousand seven hundred fifty dollars for a nonresident professional employer organization;~~

~~(d) three thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is seven thousand five hundred dollars for each nonresident professional employer organization group.~~

~~(B) In addition to the license fee, the department may levy a biennial assessment for each professional employer organization and each professional employer organization group sufficient to cover all costs for regulation of the profession pursuant to this chapter and other applicable provisions of law. The biennial assessment fee is:~~

~~(1) due and payable upon initial licensure and subsequent renewals and one year before the expiration of any licensure period; and~~

~~(2) based on the gross South Carolina payroll, excluding tips and gratuities, of a professional employer organization’s or professional employer organization group’s clients during the period beginning nine quarters before and ending one quarter before each assessment;~~

~~(3) calculated in accordance with the following table:~~

~~Amount of Gross Assessment Fee~~

~~South Carolina Payroll Due~~

~~less than $500,000 $ 500~~

~~$500,001”$1,000,000 $ 750~~

~~$1,000,001”$2,500,000 $ 1,000~~

~~$2,500,001”$5,000,000 $ 1,250~~

~~$5,000,001”$10,000,000 $ 1,750~~

~~$10,000,001”$15,000,000 $ 2,250~~

~~$15,000,001”$25,000,000 $ 3,000~~

~~$25,000,001”$50,000,000 $ 3,750~~

~~over $50,000,000 $ 4,000~~

~~(C) In order to ensure compliance with the requirements of subsection (B), each licensee annually shall submit a statement of total gross South Carolina payroll, excluding tips and gratuities, along with copies of all South Carolina Unemployment Compensation tax returns for the preceding calendar year.~~

~~(D) The total licensure fee and biennial assessments during a licensure period must not exceed:~~

~~(1) eight thousand seven hundred fifty dollars for a professional employer organization license; or~~

~~(2) ten thousand dollars for a professional employer organization group license issued under Section 40‑68‑90.~~

~~(E) The department may change the anniversary date of the first biennium, as established in regulation 28‑910(3)(d), so that approximately one‑half of the applications for renewal licenses will be due on or before September 30 of the biennium and the other half on or before March 30 of the following year.~~

~~Section 40-68-55.~~ ~~The department may by regulation provide for the acceptance of an affidavit or certification of a bonded, independent, and qualified assurance organization that has been approved by the department for certifying qualifications of a professional employer organization or professional employer organization group in lieu of those requirements of Sections 40‑68‑30 and 40‑68‑40 or any other requirements of a licensee under this chapter as determined by the department. In the regulation the department may establish a fee structure for the acceptance not to exceed the fees in Section 40‑68‑50. Professional employer organizations or professional employer organization groups are subject to any assessment under Section 40‑68‑50(B). This section does not relieve a professional employer organization or professional employer organization group of any notice or disclosure obligations under this chapter to an insurer, client, or employee, or of any other requirement of this chapter not expressly waived by regulation of the department.~~

~~Section 40-68-60.~~ ~~(A) A licensee shall establish the terms of a professional employer organization services agreement by a written contract between the licensee and the client company. The licensee shall give written notice of the agreement as it affects assigned employees to each employee assigned to a client company in the manner provided in this section.~~

~~(B) A written explanation of the agreement must be provided to each assigned employee by delivering it to the employee personally within ten days after executing the agreement. The explanation must state, substantially, the terms of the agreement between the licensee and client company and include the same notice that is required to be posted in the client company’s place of business.~~

~~(C) The client company shall post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the assigned employees a notice stating, substantially, the following:~~

~~“We are operating under and subject to the Workers’ Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert name of professional employer organization, address, and telephone number) or (name of client company, address, and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits”.~~

~~(D) As between the client company, the professional employer organization, and the employee, the notice to or acknowledgment of the occurrence of an injury on the part of the client company or the professional employer organization is notice to or knowledge on the part of the professional employer organization and its workers’ compensation insurer or the client company and its workers’ compensation insurer, or both.~~

~~Section 40-68-70.~~ ~~(A) A contract between a licensee and a client company must provide that the licensee:~~

~~(1) reserves the right of direction and control over employees assigned to a client company;~~

~~(2) assumes responsibility for the payment of wages to the assigned employees without regard to payments by the client to the licensee;~~

~~(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees;~~

~~(4) retains the right to hire, fire, discipline, and reassign the assigned employees;~~

~~(5) retains the right of direction and control over the adoption of employment and safety policies and the management of workers’ compensation claims, claim filings, and related procedures on joint agreement by the client company and the licensee; and~~

~~(6) agrees that:~~

~~(a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers’ compensation insurer;~~

~~(b) for the purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers’ compensation insurer;~~

~~(c) the licensee and its workers’ compensation insurer is bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and~~

~~(d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the licensee, client company, their respective workers’ compensation insurers from payment of compensation for disability or death sustained by an employee during the life of a workers’ compensation insurance policy; and~~

~~(7) with a client company, in the contract, shall specify whether the licensee, the client company, or both, are securing workers’ compensation liability.~~

~~(B) A licensee, who secures workers’ compensation insurance for a client company before the execution of the contract and on an annual basis, shall conduct a good faith investigation of the client company’s business. The investigation must determine if the client company engages any nonassigned employees, including those considered employees under Title 42, in any part of the client company’s trade, business, or occupation. Upon a determination that a client company’s entire work force includes nonassigned employees, the contract must require the client company to secure and maintain workers’ compensation insurance.~~

~~(C) Upon the failure or neglect of a client company to secure and maintain workers’ compensation insurance, the licensee and its workers’ compensation carrier agree and are liable to pay to a worker employed in the work of the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been employed by the licensee as provided in Section 40‑68‑120.~~

~~(D) A licensee’s workers’ compensation insurer providing coverage to a client company’s assigned employees must be provided the information derived from the licensee’s investigation of the client company’s business.~~

~~(E) The licensee is the employer of the employees assigned to a client company. The rights and remedies granted by Title 42 to an employee when he and the licensee have accepted the provisions of Title 42 to pay and accept compensation exclude all other rights as provided in Section 42‑1‑540. This chapter does not affect the rights, duties, or liabilities of licensees, client companies, or employees under federal law.~~

~~Section 40-68-75.~~ ~~(A) An employer subject to the provisions of Title 42 who contracts with a professional employer organization or professional employer organization group continues to be subject to the provisions of Title 42 and shall comply with Title 42 with regard to procuring and maintaining workers’ compensation insurance for nonassigned employees. For purposes of construction, the term “employees” in Section 42‑1‑360 includes both assigned and nonassigned employees.~~

~~(B) A client company who refuses or neglects to provide workers’ compensation insurance coverage to its nonassigned employees must be fined one thousand dollars a day for each nonassigned employee for each day the client company refuses or neglects to provide workers’ compensation insurance. In this event, the client company is liable during the continuance of the refusal or neglect to an employee either for compensation under Title 42 or in an action at law instituted by the employee or his personal representative against the client company to recover damages for personal injury or death by accident. In the action at law, the client company may not be permitted to defend upon any of the grounds mentioned in Section 42‑1‑510 and Section 42‑1‑540 does not apply. The fine provided in this section must be assessed by the Workers’ Compensation Commission in an open hearing with the right of review and appeal as in other cases.~~

~~Section 40-68-80.~~ ~~A group of at least two but not more than five professional employer organizations that are majority‑owned by the same entity may be licensed as a professional employer organization group. A professional employer organization group may satisfy the reporting and financial requirements of the chapter on a consolidated basis. As a condition of the issuance of a professional employer organization group license, each person that is a member of the group must guarantee payment of all financial obligations of other members of the group.~~

~~Section 40-68-90.~~ ~~(A) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the following conditions if the:~~

~~(1) applicant’s state of residence provides for licensing of professional employer organizations, the applicant is licensed and in good standing in its state of residence, and the applicant’s state of residence grants a similar privilege for restricted licensing to professional employer organizations or professional employer organization groups that are residents in South Carolina;~~

~~(2) applicant does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and~~

~~(3) applicant does not have more than forty leased employees working in this State.~~

~~(B) An applicant for a restricted license is exempt from the requirements of Section 40‑68‑40(F).~~

~~(C) An applicant for a nonresident or restricted license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.~~

~~Section 40-68-100.~~ ~~The department shall issue a license to an applicant that meets the requirements of this chapter. The license must be issued not later than the ninetieth day after the date on which the completed application is filed with the department. A license issued by the department under this chapter is valid for two years. The department shall renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees.~~

~~Section 40-68-110.~~ ~~(A) A licensee shall disclose to the department, each client company, and its assigned employees information relating to any insurance or benefit plan provided for the benefit of its assigned employees. Benefit plan information must be provided to the assigned employees and the assigned employees shall sign a statement disclosing they have read and understand the benefit plan information prior to enrollment of assigned employees into the plan. The information must, at a minimum, include:~~

~~(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 on whose behalf benefits are to be paid;~~

~~(4) the policy limits on each insurance policy;~~

~~(5) whether the coverage is fully insured, partially insured, or fully self‑funded; and~~

~~(6) other information, such as full disclosure of deductibles or co‑ payments.~~

~~(B) With respect to any insurance or benefit plan provided by a licensee for the benefit of its assigned employees, the licensee shall provide to the assigned employees the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.~~

~~(C) The licensee shall disclose to the department whether the coverage is fully insured, partially insured, or fully self‑funded. This provision does not in any way endorse or approve the sponsoring of partially insured or self‑funded benefit plans by a licensee, as these plans may not be sponsored, offered, endorsed, or otherwise proffered by a licensee.~~

~~(D) The licensee shall notify the client company and the department in writing about a discontinuance and replacement, if any, of any health plan or workers’ compensation insurance coverage no later than ten business days after the discontinuance and before offering any replacement policy.~~

~~(E) The administrator by regulation may require the filing by licensees of other reports necessary to the implementation of this chapter.~~

~~Section 40-68-120.~~ ~~(A) A licensee may elect to obtain workers’ compensation insurance coverage in the same manner as any other employer as provided for in this subsection:~~

~~(1) An insurer issuing the policy must be licensed in this State to write such policies.~~

~~(2) An insurer issuing a policy of workers’ compensation insurance to a licensee may not plead as a defense:~~

~~(a) that the client company is not subject to Title 42. The insurer is estopped to deny coverage;~~

~~(b) lack of an employment relationship between a person engaged in an employment as defined in Title 42 and the client company;~~

~~(c) breach of contract by the licensee or client company. The insurer is not entitled to plead as a defense to an employee’s claim for benefits any defects in the performance of a contract between the licensee and client company.~~

~~(3) No policy of insurance against liability arising under Title 42 may be issued to a licensee unless the policy contains the agreement of the insurer that the insurer will promptly pay to the persons entitled to them all benefits conferred by Title 42 and all installments of the compensation that may be awarded or agreed upon and that the obligation is not affected by default of the licensee or client company or by default in giving notice required by the policy or otherwise.~~

~~(4) A policy of insurance issued to a licensee is, and must be construed as, a direct promise by the insurer to the person entitled to compensation enforceable in his name.~~

~~(5) The insurer agrees that:~~

~~(a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers’ compensation insurer;~~

~~(b) for purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers’ compensation insurer;~~

~~(c) the licensee and its workers’ compensation insurer, in all things, are bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and~~

~~(d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the workers’ compensation insurer from the payment of compensation for disability or death sustained by an employee during the life of a workers’ compensation insurance policy issued to the licensee.~~

~~(6) No agreement by an employee to pay a portion of a premium paid by the licensee or client company to an insurer or to contribute to a benefit fund or department maintained by a licensee or client company for the purpose of providing insurance under Title 42 is valid, and any licensee or client company who makes a deduction for the purpose from the pay of an employee entitled to benefits under Title 42 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars plus reimbursement to the employee of the deductions.~~

~~(7) When a person referred to as a licensee undertakes to provide assigned employees to a client company, the licensee is liable to pay a worker employed by the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been immediately employed by the licensee. When the licensee is liable to pay compensation under this section, it is entitled to indemnity from a client company who would have been liable to pay compensation to the worker independently of this section and have a cause of action for indemnity. This section must be construed to require that a licensee’s workers’ compensation carrier is liable to pay compensation to the client company’s entire work force with the licensee and carrier’s right to indemnity from the client company.~~

~~(B) If workers’ compensation coverage is obtained, that insurance must comply with the applicable provisions of the insurance laws of this State.~~

~~(C) A licensee is entitled to the same rights to obtain all types of insurance coverage, including endorsements obtained by other business entities doing business in this State.~~

~~(D) For companies who have obtained workers’ compensation insurance coverage in the residual (assigned risk) market, the first three years that a client company has a contract with a licensee, the licensee shall pay workers’ compensation insurance premiums based on the experience modification rate of the client company. The South Carolina Department of Insurance shall adopt regulations to implement this subsection. This subsection applies only to the residual (assigned risk) market.~~

~~(E) The licensee must categorize leased employees according to their classification within a client company.~~

~~(F) A licensee and client company both are deemed an employer and may sponsor and maintain benefit plans for assigned workers. An employee health benefit plan sponsored by a licensee for the benefit of assigned employees must be an insured health benefit plan offered by an insurer licensed under Title 38. The employee health benefit plans provided by a licensed insurance provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including The Employment Retirement Income Security Act (ERISA), 29 USC Section 101, et seq. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self‑insured, self‑funded, or other plans for health benefits, that are not licensed with the Department of Insurance.~~

~~(G) Notwithstanding subsection (F), a client company may include assigned employees in a benefit plan sponsored and maintained solely by the client company for its own employees, as long as the benefit plan complies with Title 38 and federal law including ERISA.~~

~~(H) A professional employer organization or professional employer organization group is responsible for the payment of unemployment taxes pursuant to law.~~

~~(I) Licensees, within thirty days, shall notify the South Carolina Employment Security Commission and the department of the start and termination of the licensee’s relationship with a client company.~~

~~Section 40-68-130.~~ ~~(A) The department by regulation shall determine the form and content of:~~

~~(1) the licenses issued under this chapter; and~~

~~(2) notices required to be posted under this section.~~

~~(B) The license issued under this chapter must be posted in a conspicuous place in the principal place of business in this State of the licensee. The licensee shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.~~

~~Section 40-68-140.~~ ~~(A) A licensee may not conduct business under a name other than that specified in the license. A license issued under this chapter is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by its use. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.~~

~~(B) A licensee may change its licensed name at any time by notifying the department and paying a fee for each change of name. The department by regulation shall set the fee for each name change in an amount not to exceed fifty dollars. A licensee may change its name on renewal of the license without the payment of the name change fee.~~

~~(C) A licensee must notify the department in writing of:~~

~~(1) a change in the location of its primary business office;~~

~~(2) the addition of more business offices; or~~

~~(3) a change in the location of business records maintained by the licensee.~~

~~Section 40-68-150.~~ ~~(A) A person may not:~~

~~(1) engage in professional employer services without holding a license under this chapter as a professional employer organization or a professional employer organization group;~~

~~(2) use the name or title “staff leasing services company”, “licensed staff leasing services company”, “licensed staff leasing services group”, or “professional employer organization”, “licensed professional employer organization”, “licensed professional employer organization group”, “ professional employer organization group”, “staff leasing services group”, or otherwise represent that it 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 false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceeding under this chapter;~~

~~(5) use or attempt to use a license that has expired or been revoked;~~

~~(6) offer an employee a self‑funded, self‑insured, or other employee benefit plan not licensed under Title 38, unless the program is maintained by the client company individually for the sole benefit of participating co‑employees of the client company; or~~

~~(7) misrepresent that any self‑funded, self‑insured, or unlicensed benefit plans are licensed under Title 38 or otherwise in compliance with ERISA.~~

~~(B) A person who voluntarily violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars, or both.~~

~~Section 40-68-155.~~ ~~When a complaint is filed against a licensee with the department regarding any insurance issue, the Department of Insurance shall investigate the complaint.~~

~~Section 40-68-160.~~ ~~(A) For the purposes of this section, “ conviction” includes a plea of guilty or nolo contendere or a finding of guilt.~~

~~(B) The department may take disciplinary action against a licensee, or a person engaging in professional employer services without a license, on any of the following grounds:~~

~~(1) the conviction of a licensee or a controlling person of a licensee of bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;~~

~~(2) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the operation of a professional employer organization or the ability of the licensee or a controlling person of a licensee to operate a professional employer organization;~~

~~(3) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the classification, misclassification, or under‑reporting of employees under the South Carolina Workers’ Compensation Act;~~

~~(4) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the establishment or maintenance of a self‑insurance program, whether health insurance, workers’ compensation insurance, or other insurance;~~

~~(5) the conviction of a licensee or a controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a professional employer organization;~~

~~(6) engaging in professional employer services without a license;~~

~~(7) transferring or attempting to transfer a license issued pursuant to this chapter;~~

~~(8) violating this chapter or an order or regulation issued by the department pursuant to this chapter;~~

~~(9) failing to notify the department, in writing, of the civil judgment or felony conviction of a controlling person not later than the thirtieth day after the date on which the judgment or conviction is entered;~~

~~(10) failing to cooperate with an investigation, examination, or audit of the licensee’s records conducted by the licensee’s insurance company or its designee, as provided by the insurance contract or as authorized by law by the South Carolina Department of Insurance;~~

~~(11) failing to notify the department and the South Carolina Department of Insurance not later than the thirtieth day after the effective date of a change in ownership, principal business address, or the address of accounts and records;~~

~~(12) failing to correct a tax filing or payment deficiencies within a reasonable time as determined by the department;~~

~~(13) refusing, after reasonable notice, to meet reasonable health and safety requirements within the licensee’s control and made known to the licensee by a federal or state agency;~~

~~(14) failing to correct a delinquency in the payment of the licensee’s insurance premiums within a reasonable time;~~

~~(15) failing to correct a delinquency in the payment of an employee benefit plan premiums or contributions within a reasonable time;~~

~~(16) knowingly or without sufficient inquiry, maintaining, sponsoring, offering, endorsing, or otherwise proffering self‑insured, self‑funded, or other employee benefit plans that are not licensed by the Department of Insurance;~~

~~(17) knowingly making a material misrepresentation to an insurance company, to the department, or other governmental agency;~~

~~(18) adverse final action by a state or federal regulatory agency for violations within the scope or control of the licensee;~~

~~(19) failure to inform the department in writing within thirty days of an adverse final action by a state or federal regulatory agency; or~~

~~(20) in case of a professional employer organization or group that has qualified for licensing pursuant to Section 40‑68‑55, the failure to notify the department within thirty days of any change in the status of its certification with the independent and qualified assurance organization.~~

~~(C) Upon finding that a licensee has violated one or more provisions of this section, the department may:~~

~~(1) deny an application for a license;~~

~~(2) revoke, restrict, suspend, or refuse to renew a license;~~

~~(3) impose an administrative penalty in an amount not less than one thousand dollars for each violation, but not more than fifty thousand dollars;~~

~~(4) issue a reprimand;~~

~~(5) issue a cease and desist order; or~~

~~(6) place the licensee on probation for a period and subject to conditions and restrictions that the department specifies.~~

~~(D) On revocation, or suspension of a license, the licensee immediately shall return the license to the department and may not:~~

~~(1) solicit any new clients; or~~

~~(2) enter into or execute any additional contracts for professional employer services.~~

~~(E) Disciplinary action, a denial of an application for a new or renewal license, a revocation or suspension of a license, or a determination that a controlling person is unqualified may occur subject to the Administrative Procedures Act, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person. All contested hearings pursuant to this section are before the Administrative Law Court.~~

~~(F) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been corrected.~~

~~(G) A licensee who is found to be engaged in unlawful conduct may be assessed the reasonable costs necessary to the investigation, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this chapter.~~

~~Section 40-68-165.~~ ~~The department or the Attorney General may file an action in circuit court to enforce the provisions of this chapter.~~

~~Section 40-68-170.~~ ~~All fees collected by the department under this chapter must be used to implement the provisions of this chapter.~~

~~Section 40-68-180.~~ ~~This chapter does not exempt a client of a licensee or an assigned employee from any other license requirements imposed under local, state, or federal law. An employee who is licensed, registered, or certified under law and who is assigned to a client company is an employee of the client company for the purpose of that license, registration, or certification, but otherwise remains the employee of the licensee as provided in this chapter. Nothing in this chapter affects the South Carolina Employment Security Law (Sections 41‑27‑10 through 41‑41‑50).~~

South Carolina Professional Employer Organization Act

Section 40‑68‑10. This chapter may be cited as the ‘South Carolina Professional Employer Organization Act’.

Section 40‑68‑20. As used in this chapter:

(1) ‘Applicant’ means a person seeking an initial or renewal license pursuant to this chapter.

(2) ‘Client’ means a person that enters into a professional employer agreement with a licensee.

(3) ‘Controlling person’ means:

(a) an officer or director of a professional employer organization that is a corporation, a shareholder, or a member holding ten percent or more of the voting stock or ownership of a professional employer organization that is a corporation or limited liability company, or a partner of a professional employer organization;

(b) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a professional employer organization through the ownership of voting securities, by contract or otherwise, and who is actively involved in the daily management of the company; or

(c) an individual employed, appointed, or authorized by a business seeking to offer professional employer services to enter into a contractual relationship with a client on behalf of the business.

(4) ‘Covered employee’ means:

(a) An individual having:

(i) a coemployment relationship with a licensee; and

(ii) a client who receives with the license written notice of coemployment and whose coemployment relationship is pursuant to a professional employer 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 licensee and the client have expressly agreed in the professional employer agreement that this individual would not be a covered employee, provided this individual meets the criteria of this paragraph and acts as an operational manager or performs daily operational services for the client.

(5) ‘Department’ means the South Carolina Department of Consumer Affairs.

(6) ‘Direct employee’ means an individual who is an employee of either the client or the licensee who is not a covered employee.

(7) ‘Entire work force’ means all persons engaged by a client and are employees as defined in Title 42 including persons considered employees pursuant to Sections 42‑1‑400, 42‑1‑410, and 42‑1‑420.

(8) ‘Good moral character’ means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this State and nation.

(9) ‘Individual’ means one human being.

(10) ‘Insured health benefit plan’ means a plan offered by an insurer licensed by the Department of Insurance.

(11) ‘Key personnel’ means a person who:

(a) may direct or cause the direction of the management of a company seeking to offer professional employment services in this State; and

(b) is directly responsible for the daily management of the operations of the company in this State.

(12) ‘Licensee’ means a person licensed pursuant to this chapter.

(13) ‘Person’ means a person as defined in Section 2‑7‑30.

(14) ‘Professional employer agreement’ means a written contract by and between a client and a licensee that provides:

(a) for the coemployment of covered employees;

(b) an allocation of employer rights and obligations between the client and the licensee with respect to covered employees; and

(c) that the licensee and the client assume the responsibilities required by this chapter.

(15) ‘Professional employer organization’ means a person engaged in the business of providing a professional employer service. A professional employer organization does not include:

(a) an arrangement in which a person whose principal business activity is not entering professional employer arrangements and which does not hold itself out as a professional employer organization shares an employee with a commonly owned company within the meaning of Sections 441(b) and (c) of the Internal Revenue Code of 1986, as amended;

(b) an independent contractor arrangement by which a person assumes responsibility for the product produced or service performed by this person or his agent and retains and exercises primary direction and control over the work performed by the individual whose service is supplied pursuant to this arrangement; or

(c) providing a temporary help service.

(16) ‘Professional employer organization group’ means a combination of professional employer services companies that operates pursuant to a group license issued pursuant to Section 40‑68‑130.

(17) ‘Professional employer service’ means the service of entering a coemployment relationship pursuant to this chapter in which all or a majority of the employees providing a service to a client, division, or work unit of a client are covered employees.

(18) ‘Working capital means’ current assets less current liabilities as determined pursuant to generally accepted accounting principles.

Section 40‑68‑30. (A) The department shall:

(1) adopt regulations necessary to administer this chapter and in compliance with the Administrative Procedures Act, found at S.C. Code Ann. Section 1‑23‑10, et seq;

(2) issue a license to an applicant that meets the requirements of this chapter no later than ninety days after the date on which the completed application is filed with the department;

(3) renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees;

(4) by regulation determine the form and content of:

(a) a license issued pursuant to this chapter; and

(b) notice required pursuant to this section; and

(5) maintain a list of licensees and make this list readily available to the public by electronic or other common means.

(B) A license issued by the department pursuant to this chapter:

(1) is valid until the end of the two‑year licensing cycle in which the application was filed; and

(2) is governed and controlled by this chapter and the regulations adopted by the department.

Section 40‑68‑40. (A) A person may not engage in or offer professional employer services in this State without holding a license issued pursuant to this chapter. A person that desires a license pursuant to this chapter shall file with the department an application accompanied by an application fee of one hundred dollars for each controlling person. In addition, the application fee is two hundred dollars for each professional employer organization, and three hundred dollars for each professional employer organization group.

(B) The department may require an applicant to provide information and certifications to determine whether the applicant meets the licensing requirements of this chapter and also whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(C) A licensee or controlling person shall notify the department within thirty days of a felony conviction or civil judgment entered against the licensee or controlling person.

(D) An application for a license pursuant to Section 40‑68‑30 must provide the information required by this chapter for each member of the group. An applicant is ineligible for a license for one year after the date of final action on the denial or revocation of a license applied for or issued pursuant to this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:

(1) an inadvertent error or omission in the application if that error or omission is promptly corrected;

(2) the experience documented to the department was insufficient at the time of the previous application;

(3) the department was unable to complete the criminal background investigation required pursuant to Section 40‑68‑50 because of insufficient information received from a local, state, or federal law enforcement agency; or

(4) that one or more of the controlling persons of the applicant or licensee was determined by the department to be unsuitable, if that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.

Section 40‑68‑50. (A) To be qualified to serve as a controlling person of a licensee pursuant to this chapter, a person must be at least eighteen years of age, be of good moral character, and have educational, managerial, or business experience relevant to:

(1) operation of a business entity offering professional employer services; or

(2) services as a controlling person of a professional employer organization.

(B) The department shall conduct a background investigation of each individual applicant and of each controlling person of each applicant and require fingerprinting of each applicant and each controlling person to determine whether the applicant or controlling person is qualified pursuant to this chapter. The department may deny an application for the issuance or renewal of a license if it finds that a controlling person is not qualified pursuant to this chapter. This investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department, if necessary, of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(C) Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewal license.

(D) A licensee shall maintain a registered agent for the service of process in this State.

(E) An applicant must demonstrate positive net capital as reflected on the financial statements filed pursuant to subsection (F). An applicant that does not have this positive working capital may provide guarantees, letters of credit, or other security acceptable to the department in a combined total amount equaling the deficiency plus at least fifty thousand dollars. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty.

(F)(1) At the time of initial application, the applicant shall file the most recent financial statements of the professional employer organization or professional employer organization group. The report of the auditor of a financial statement filed with an initial application may not be older than thirteen months from the application date. An applicant renewing a license shall file the most recent financial statements of the professional employer organization or professional employer group. The department may grant an extension to file financial statements of the professional employer organization or professional employer organization group to an applicant for a renewal license if he files this request with a letter from the auditor explaining the reason for the delay and the anticipated completion date.

(2) A financial statement in item (1) must be:

(a) prepared according to generally accepted accounting principles;

(b) audited by an independent certified public accountant licensed to practice in the jurisdiction in which the certified public accounted is located; and

(c) without qualification as to the status of the applicant or licensee as a going concern as reflected in the audit report.

(3) This subsection does not apply to an applicant seeking a license pursuant to Section 40‑68‑140 or 40‑68‑150.

(G)(1) A controlling person must have at least two years of other related industry experience as approved by the department before the initial license is issued.

(2) Notwithstanding item (1), a person licensed before September 30, 2005, may continue to act as a professional employment organization after that date if they maintain compliance with the continuing professional education requirements of Section 40‑68‑60 and otherwise comply with this chapter.

Section 40‑68‑60. (A)(1) Key management personnel of all licensees must complete at least eight hours of continuing professional education annually.

(2) This section does not apply to a license issued pursuant to Section 40‑68‑140 or 40‑68‑150.

(3) A licensee may carry up to eight hours of continuing professional education from the year in which the education is accomplished to the next year.

(B)(1) Continuing professional education must be reported to the department annually on a form approved by the department showing the date and title of the courses taken, the teacher or sponsor of the course, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equals one hour of continuing professional education. A course sponsor shall maintain records of attendees for two years after the course is completed.

(2)(a) A licensee must maintain documentation of attendance at the courses or correspondence courses he successfully completes.

(b) This documentation:

(i) must consist of a certificate of completion issued by the teacher or sponsor of the course showing the number of hours of continuing professional education completed; and

(ii) is subject to inspection by the department for up to two years after the date the course is completed.

(c) A course offered by the National Association of Professional Employer Organizations or a subunit of it, the department, or other approved courses related to employment, are considered qualified courses for continuing professional education. The department shall offer continuing professional education courses to assist licensees and controlling persons in obtaining the continuing professional education required by this chapter.

(3)(a) The department shall appoint four licensees or controlling persons and one representative of the department to a panel to approve any courses questioned as to their qualifications as continuing professional education.

(b) A member of the panel serves a two‑year term at the pleasure of the department.

(c) The panel:

(i) may conduct its meetings via conference call; and

(ii) shall develop a questionnaire to ascertain the interest and background of potential members of this panel.

(4) If key management personnel of the licensee fail to complete continuing professional education in a timely manner, the licensee must pay a penalty not in excess of one hundred dollars to renew the license. A controlling person that fails to complete continuing professional education in a timely manner may not continue as a controlling person of the licensee, unless he is an owner or officer. A licensee or controlling person may request an administrative hearing to appeal the expiration of his license, or controlling person status, respectively, for failure to complete continuing professional education requirements. A license may be renewed without penalty within thirty days after its expiration if the controlling person completes the professional education requirement. If a controlling person or key management personnel fails to complete the professional education requirement within thirty days after the expiration of the license, the controlling persons or key management personnel shall complete the professional education requirements prior to the applicant filing an initial application.

Section 40‑68‑70. (A) An applicant for an initial or renewal license shall pay a fee to the department on the issuance of the license or license renewal as follows:

(1) for an initial license in the first year of the biennium:

(a) two thousand dollars for a professional employer organization;

(b) four thousand dollars for a professional employer organization group;

(c) five hundred dollars for a restricted license;

(d) four hundred dollars for a de minimis operations license;

(2) for an initial license in the second year of the biennium:

(a) one thousand dollars for each professional employer organization;

(b) three thousand five hundred dollars for each resident professional employer organization group;

(c) five hundred dollars for a restricted license;

(d) four hundred dollars for a de minimis operations license;

(3) for a renewal license:

(a) fifteen hundred dollars for a professional employer organization;

(b) three thousand dollars for a professional employer organization group;

(c) five hundred dollars for a restricted license;

(d) four hundred dollars for a de minimis operations license.

(B) In addition to the license fee, the department may levy a biennial assessment for each licensee sufficient to cover all costs for regulation of the profession pursuant to this chapter and other applicable provisions of law. The biennial assessment fee is:

(1) due and payable upon initial licensure and subsequent renewals and one year before the expiration of any licensure period;

(2) based on the gross South Carolina payroll, excluding tips and gratuities, of the clients of a licensee during the period beginning nine quarters before and ending one quarter before each assessment; and

(3) calculated in accordance with the following table:

Amount of Gross Assessment Fee

South Carolina Payroll Due

less than $500,000 $ 500

$500,001 to $1,000,000 $ 750

$1,000,001 to $2,500,000 $ 1,000

$2,500,001 to $5,000,000 $ 1,250

$5,000,001 to $10,000,000 $ 1,750

$10,000,001 to $15,000,000 $ 2,250

$15,000,001 to $25,000,000 $ 3,000

$25,000,001 to $50,000,000 $ 3,750

over $50,000,000 $ 4,000

(C) A licensee:

(1) Annually shall submit a statement of total gross South Carolina payroll, excluding tips and gratuities, along with copies of all South Carolina Unemployment Compensation tax returns for the preceding calendar year.

(2) Within thirty days, shall notify the South Carolina Employment Security Commission and the department of the start and termination of the relationship of the licensee with a client.

(D) The total licensure fee and biennial assessments during a licensure period must not exceed:

(1) eight thousand seven hundred fifty dollars for a professional employer organization license; or

(2) ten thousand dollars for a license issued pursuant to Section 40‑68‑140.

(E) The department may change the anniversary date of the first biennium by regulation.

(F) A fee, assessment, or other amount collected by the department pursuant to this chapter must be used to implement the provisions of this chapter.

Section 40‑68‑80. (A) The department shall to the extent practical permit by rule the acceptance of electronic filings in conformance with the Uniform Electronic Transactions Act, including applications, documents, reports, and other filings required by this chapter.

(B)(1) The department may approve the acceptance of electronic filings and other assurance by an independent and qualified assurance organization approved by the department that provides satisfactory assurance of compliance acceptable to the department consistent with or in lieu of the requirements of Sections 40‑68‑40 and 40‑68‑50 and other requirements of this chapter or the rules promulgated pursuant to it.

(2) An approved assurance organization may act on behalf of the licensee or applicant in complying with the licensing requirements of this chapter, including electronic filings of information and payment of registration fees.

(3) Use of an approved assurance organization must be optional and not mandatory for an applicant.

(4) This section does not limit or alter the authority of the department to:

(a) grant a license;

(b) terminate a license;

(c) conduct an investigation; or

(d) enforce this chapter.

(5)(a) The department may establish a fee structure for a licensee or applicant that uses an approved assurance organization pursuant to this section. This fee structure may not exceed the fees in Section 40‑68‑70.

(b) An applicant or licensee that uses an approved assurance organization pursuant to this section is subject to an assessment pursuant to Section 40‑68‑70(B).

(6) This section does not relieve a licensee from:

(a) notice or disclosure obligations pursuant to this chapter to an insurer, client, or employee; or

(b) another requirement of this chapter not expressly waived by regulation of the department.

Section 40‑68‑90. (A) Nothing in this chapter or in any professional employer agreement shall affect, modify, or amend any collective bargaining agreement or the rights or obligations of a client, licensee, or covered employee pursuant to the federal National Labor Act or federal Railway Labor Act.

(B) Nothing is this chapter or in any professional employer agreement shall:

(1) diminish, abolish, or remove rights of covered employees to a client or obligations of the client to a covered employee existing prior to the effective date of the professional employer agreement;

(2) affect, modify, or amend a contractual relationship or restrictive covenant between a covered employee and a client in effect at the same time a professional employer agreement becomes effective. Nor shall it prohibit or amend a contractual relationship or restrictive covenant that is entered into subsequently between a client and a covered employee. A licensee shall have no responsibility or liability in connection with, or arising out of, an existing or new contractual relationship or restrictive covenant unless the licensee has specifically agreed to otherwise in writing; or

(3) create a new or additional enforceable right of a covered employee against a licensee that is not specifically provided by the professional employer agreement or this chapter.

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

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

(2) A licensee shall not be deemed to engage in an occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirement, or is otherwise regulated by a governmental entity or this State solely by entering into and maintaining a coemployment relationship with a covered employee who is subject to such requirements or regulations.

(3) A client shall have the sole right of direction and control of the professional or licensed activities of covered employees and of the client’s business. These covered employees and clients shall remain subject to regulation by the regulatory or governmental entity of this State responsible for licensing, registration, or certification of covered employees or clients.

(D) Except as specifically provided in this chapter or in the professional employer agreement, in each coemployment relationship:

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

(2) the licensee shall be entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by this chapter or set forth in the professional employer agreement. The rights, duties, and obligations of the licensee as coemployer with respect to any covered employee shall be limited to those arising pursuant to the professional employer agreement and this chapter during the term of coemployment by the licensee of the covered employee.

(E) Unless otherwise expressly agreed by the licensee and the client in a professional employer agreement, the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client’s business, to discharge the client’s fiduciary responsibilities, or to comply with licensure requirements applicable to the client or to the covered employees.

Section 40‑68‑100. (A) A licensee shall establish the terms of a professional employer services agreement by a written contract between the licensee and the client.

(B) A written explanation of the agreement must be provided to each covered employee by delivering it to the employee personally within ten days after executing the agreement. The explanation must state, substantially, the terms of the agreement between the licensee and client and include the same notice that is required to be posted in the client’s place of business.

(C) A professional employer agreement must provide that the licensee:

(1) reserves a right of direction and control over covered employees;

(2) assumes responsibility for the payment of wages to the covered employees without regard to payments by the client to the licensee;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll relating to covered employees;

(4) retains a right to hire, fire, and discipline covered employees;

(5) retains the right of direction and control over the management of workers’ compensation claims and claim filings; and

(6) agrees that:

(a) notice to or acknowledgment of the occurrence of an injury on the part of the client is notice to or knowledge on the part of the licensee and its workers’ compensation insurer;

(b) for the purposes of Title 42, the jurisdiction of the client relating to assigned employees is the jurisdiction of the licensee and its workers’ compensation insurer;

(c) the licensee and its workers’ compensation insurer is bound by and subject to an award, judgment, or decree rendered against them pursuant to the provisions of Title 42; and

(d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client does not relieve the licensee, client, or their respective workers’ compensation insurers from payment of compensation for disability or death sustained by a covered employee while a workers’ compensation insurance policy is effective; and

(7) Except to the extent otherwise expressly provided by the applicable professional employer agreement:

(a) A client is solely responsible for the quality, adequacy, or safety of the goods or services produced or sold in his business.

(b) A client is solely responsible for directing, supervising, training, and controlling the work of the covered employees with respect to the business activities of the client and solely responsible for the acts, errors, or omissions of the covered employees with regard to these activities.

(c) A client is not liable for the acts, errors, or omissions of a licensee, or of a covered employee of the client and a licensee when this covered employee is acting pursuant to the express direction and control of the licensee.

(d) A licensee is not liable for the acts, errors, or omissions of a client or of a covered employee of the client when this covered employee is acting pursuant to the express direction and control of the client.

(e) Nothing in this subsection may serve to limit a contractual liability or obligation specifically provided in the written professional employer agreement.

(f) A covered employee is not, solely as the result of being a covered employee of a licensee, an employee of the licensee for purposes of general liability insurance, fidelity bonds, surety bonds, employer’s liability that is not covered by workers’ compensation, or liquor liability insurance carried by the licensee unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract or bond.

Section 40‑68‑110. (A) A client shall comply with and be subject to the provisions of Title 42 with regard to providing workers’ compensation coverage for a direct employee of the client. For purposes of construction, ‘employees’ as used in Section 42‑1‑360 means both covered employees and direct employees of a client.

(B) A client that does not comply with subsection (A) must:

(1) be fined by the Workers Compensation Commission one thousand dollars a day for each direct employee of the client who does not have workers’ compensation coverage, subject to hearing and appeal; and

(2) seek relief or defense pursuant to Section 42‑1‑540.

(C) The client shall post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the covered employees a notice stating, substantially, the following:

‘We are operating pursuant to and subject to the Workers’ Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert name of licensee, address, and telephone number) or (name of client, address, and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits.’

(D) As between the client, the licensee, and the employee, the notice to or acknowledgment of the occurrence of an injury on the part of the client or the licensee is notice to or knowledge on the part of the licensee and its workers’ compensation insurer, the client and its workers’ compensation insurer, or both.

(E)(1) The responsibility to obtain workers’ compensation coverage for covered employees pursuant to Title 42 is specifically allocated in the professional employer agreement to the licensee, the client, or both.

(2) A licensee who secures workers’ compensation insurance for a client before the execution of the contract and on an annual basis shall conduct a good faith investigation of the business of the client. This investigation must determine if the client engages any direct employees of the client, including those considered employees pursuant to Title 42, in any part of the trade, business, or occupation of the client. Upon a determination that the entire workforce of a company includes direct employees of the client, the contract must require the client company to secure and maintain workers’ compensation insurance for these direct employees of the client.

(F) The workers’ compensation insurer that provides coverage to a covered employee of the licensee must be given information derived from the investigation of the client’s business by the licensee.

(G) The licensee and the client are both an employer of covered employees. The rights and remedies pursuant to Title 42 to a covered employee when the licensee and he have accepted the provisions of Title 42 to pay and accept compensation exclude all other rights as provided in Section 42‑1‑540. Except as otherwise provided in this section, Section 42‑1‑540 applies to the licensee, the client, to a covered employee, and a direct employee of the client regardless of whether the licensee or the client has obtained the applicable worker’s compensation coverage. This chapter does not affect the rights, duties, or liabilities of a licensee, client company, direct employee, or covered employee pursuant to federal law.

(H)(1) A licensee may elect to obtain workers’ compensation insurance coverage in the same manner as any other employer as provided in this subsection.

(a) An insurer issuing the policy must be licensed in this State to write such policies.

(b) An insurer issuing a policy of workers’ compensation insurance to a licensee may not plead as a defense:

(i) that the client is not subject to Title 42. The insurer is estopped to deny coverage;

(ii) lack of an employment relationship between a person engaged in an employment as defined in Title 42 and the client;

(iii) breach of contract by the licensee or client. The insurer is not entitled to plead as a defense to an employee’s claim for benefits any defects in the performance of a contract between the licensee and client.

(c) No policy of insurance against liability arising pursuant to Title 42 may be issued to a licensee unless the policy contains the agreement of the insurer that the insurer will promptly pay to the persons entitled to them all benefits conferred by Title 42 and all installments of the compensation that may be awarded or agreed upon and that the obligation is not affected by default of the licensee or client or by default in giving notice required by the policy or otherwise.

(d) A policy of insurance issued to a licensee is, and must be construed as, a direct promise by the insurer to the person entitled to compensation enforceable in the name of that person.

(e) The insurer agrees that:

(i) notice to or acknowledgment of the occurrence of an injury on the part of the client is notice to or knowledge on the part of the licensee and its workers’ compensation insurer;

(ii) for purposes of Title 42, the jurisdiction of the client is the jurisdiction of the licensee and its workers’ compensation insurer;

(iii) the licensee and its workers’ compensation insurer, in all things, are bound by and subject to the awards, judgments, or decrees rendered against them pursuant to the provisions of Title 42; and

(iv) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client does not relieve the workers’ compensation insurer from the payment of compensation for disability or death sustained by an employee during the life of a workers’ compensation insurance policy issued to the licensee.

(f) No agreement by an employee to pay a portion of a premium paid by the licensee or client to an insurer or to contribute to a benefit fund or department maintained by a licensee or client for the purpose of providing insurance pursuant to Title 42 is valid, and any licensee or client who makes a deduction for the purpose from the pay of an employee entitled to benefits pursuant to Title 42 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars plus reimbursement to the employee of the deductions.

(g) When a person referred to as a licensee undertakes to provide covered employees to a client, the licensee is liable to pay a worker employed by the client compensation pursuant to Title 42 which the licensee would have been liable to pay if the worker had been immediately employed by the licensee. When the licensee is liable to pay compensation pursuant to this section, it is entitled to indemnity from a client who would have been liable to pay compensation to the worker independently of this section and have a cause of action for indemnity. This section must be construed to require that a licensee’s workers’ compensation carrier is liable to pay compensation to the client’s entire workforce with the licensee and carrier’s right to indemnity from the client.

(2) If workers’ compensation coverage is obtained, that insurance must comply with the applicable provisions of the insurance laws of this State.

(3) A licensee is entitled to the same rights to obtain all types of insurance coverage, including endorsements obtained by other business entities doing business in this State.

(4) For companies who have obtained workers’ compensation insurance coverage in the residual or assigned risk market, the first three years that a client has a contract with a licensee, the licensee shall pay workers’ compensation insurance premiums based on the experience modification rate of the client. The South Carolina Department of Insurance shall adopt regulations to implement this subsection. This subsection applies only to the residual or assigned risk market.

(5) The licensee must categorize leased employees according to their classification within a client.

(6) A licensee and client both are considered an employer and may sponsor and maintain benefit plans for covered workers. An employee health benefit plan sponsored by a licensee for the benefit of covered employees must be an insured health benefit plan offered by an insurer licensed pursuant to Title 38. The employee health benefit plans provided by a licensed insurance provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including The Employment Retirement Income Security Act (ERISA), 29 U.S.C. Section 101, et seq. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self‑insured, self‑funded, or other plans for health benefits, that are not licensed with the Department of Insurance.

(7) Notwithstanding item (6), a client may include covered employees in a benefit plan sponsored and maintained solely by the client for its own employees, as long as the benefit plan complies with Title 38 and federal law including ERISA.

(8) A licensee is responsible for the payment of unemployment taxes pursuant to law.

Section 40‑68‑120. Nothing in this chapter affects the South Carolina Employment Security Law in Chapters 27 through 41, Title 41.

Section 40‑68‑130. A group of between two and five professional employee organizations that are majority‑owned by the same person may be licensed as a professional employer organization group. A professional employer organization group may satisfy the requirements pursuant to Section 40‑68‑50(E) and (F) on a combined or consolidated basis. Each professional employer organization that is a member of the group and any person that owns a controlling interest of the group shall guarantee payment of all financial obligations of other members of the group.

Section 40‑68‑140. (A) The department may issue a restricted license to an applicant who:

(1) is domiciled outside this State and is licensed or registered as a professional employer organization or professional employer organization group in good standing in another state and is properly registered as a foreign entity with the Office of the Secretary of State;

(2) maintains no office, sales force, or representatives in this State;

(3) solicits no clients who reside in this State; and

(4) has not more than fifty covered employees working in this State.

(B) An applicant for a restricted license is exempt from the requirements of Sections 40‑68‑50(F) and 40‑68‑150.

(C) An applicant for a restricted license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this state.

Section 40‑68‑150. (A) The department may issue a de minimis operations license to a nonresident professional employer organization or professional employer organization group for limited operation within this State if the applicant:

(1) is domiciled outside this State and is licensed or registered as a professional employer organization in good standing in another state and is properly registered as a foreign entity with the Office of the Secretary of State;

(2) does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and

(3) does not have more than ten covered employees working in this State.

(B) An applicant for a de minimis operations license is exempt from the requirements of Sections 40‑68‑50(F) and 40‑68‑60.

(C) An applicant for a de minimis operations license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.

Section 40‑68‑160. (A) A licensee shall disclose to the department, each client, and its covered employees information relating to any insurance or benefit plan provided for the benefit of its covered employees. Benefit plan information must be provided to the covered employees and the assigned employees shall sign a statement disclosing they have read and understand the benefit plan information prior to enrollment of covered employees into the plan. The information must, at a minimum, include:

(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 on whose behalf benefits are to be paid;

(4) the policy limits on each insurance policy;

(5) whether the coverage is fully insured, partially insured, or fully self‑funded; and

(6) other information, such as full disclosure of deductibles or copayments.

(B) With respect to any insurance or benefit plan provided by a licensee for the benefit of its covered employees, the licensee shall provide to the covered employees the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.

(C) The licensee shall disclose to the department whether the coverage is fully insured, partially insured, or fully self‑funded. This provision does not in any way endorse or approve the sponsoring of partially insured or self‑funded benefit plans by a licensee, as these plans may not be sponsored, offered, endorsed, or otherwise proffered by a licensee.

(D) The licensee shall notify the client and the department in writing about a discontinuance and replacement, if any, of any health plan or workers’ compensation insurance coverage no later than ten business days after the discontinuance and before offering any replacement policy.

(E) The department by regulation may require the filing by licensees of other reports necessary to the implementation of this chapter.

(F) A licensee is not engaged in the sale of insurance or in acting as a third party administrator by offering, marketing, selling, administering, or providing professional employer services that include services and employee benefit plans for covered employees.

(G) A client and a licensee shall each be considered an employer pursuant to this chapter for the purpose of sponsoring retirement and welfare benefit plans for its covered employees.

(H) A fully insured welfare benefit plan offered to the covered employees of a single licensee must be treated for the purposes of the law of this State as a single employer welfare benefit plan. The licensing requirements of this chapter do not apply to Chapter 41, Title 38.

(I) For the purposes of Chapter 71, Title 38:

(1) a licensee is considered the employer of all its covered employees; and

(2) all covered employees of one or more clients participating in a health care benefit plan sponsored by a single licensee are considered employees of that licensee.

Section 40‑68‑170. (A) A licensee may not conduct business under a name other than that specified in the license. A license issued pursuant to this chapter is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by its use. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.

(B) A licensee may change its licensed name at any time by notifying the department and paying a fee for each change of name. The department by regulation shall set the fee for each name change in an amount not to exceed fifty dollars. A licensee may change its name on renewal of the license without the payment of the name change fee.

(C) A licensee must notify the department in writing of:

(1) a change in the location of its primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records maintained by the licensee.

(D) A licensee must post the license in a conspicuous place in the principal place of business in this State of the licensee. The licensee also shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

Section 40‑68‑180. (A) For purposes of determining an incentive or business preference program based on employment, a covered employee is considered an employee solely of the client, not the licensee. Notwithstanding that the professional employer organization is the W‑2 reporting employer, the client is entitled to the benefit of or continue to qualify for an incentive, business preference program, or other benefit arising from the employment of covered employees.

(B) For the purposes of an incentive or business preference program based on the number of employees, covered employees, and direct employees of the client are considered employees solely of the client, but not the licensee.

(C) On request by the client, the state, or governmental entity, a licensee shall provide employment information required by the state or governmental entity responsible for the administration of the incentive or business preference program and necessary to support a request, claim, application, or other action by a client seeking an incentive or participation in a business preference program.

(D) In providing information required pursuant to subsection (C), a licensee may not be required to:

(1) complete forms on behalf of a client;

(2) attest, certify, and verify the accuracy of information originally provided by or based on information provided by the client to the licensee;

(3) create new information or records; or

(4) provide employment information older than two years.

(E) A licensee may charge a client a fee for information provided pursuant to subsection (C).

(F) For purposes of the Enterprise Zone Act of 1995:

(1) a client is considered to be current with respect to withholding tax if the licensee is current with respect to the withholding tax;

(2) a licensee shall apply a credit awarded to the withholding obligations of the client; and

(3) notwithstanding Sections 12‑10‑80(A)(6) and 12‑10‑81(B)(4), to the extent a return of an overpayment of withholding that results from claiming a job credit is not used as permitted by those sections, the client is liable and the licensee is not liable.

Section 40‑68‑190. With respect to this State:

(1) A covered employee whose services are subject to sales tax are considered the employees of the client for purposes of reporting, remitting, collecting, and levying sales tax. Nothing contained in this act shall relieve a client of any sales tax liability with respect to its goods or services it would have absent the existence of a professional employer agreement.

(2) A tax or assessment imposed upon a professional employer service or a business license or other fee imposed upon a licensee based on gross receipts or gross income must exclude from the gross income or receipts of the licensee the following amounts relating to covered employees employed in this State:

(a) wages and salary;

(b) benefits, including health insurance, retirement, and life insurance;

(c) workers’ compensation coverage;

(d) payroll taxes, including state, federal, local, and individual income taxes; and

(e) other withholdings or assessments.

(3)(a) A tax assessed or assessment or mandated expenditure on a per capita or per employee basis must be assessed against:

(i) the client, not the licensee, for covered employees in this State; and

(ii) against the licensee for direct employees of the licensee in this State.

(b)(i) Benefits or monetary consideration that meet the requirements of mandates imposed on a client and that are received by covered employees through the licensee either through payroll or through a benefit plan sponsored by the licensee must be credited against the obligation of the client to fulfill these mandates.

(ii) A licensee providing benefits or monetary consideration pursuant to subitem (i) does not become responsible for complying with the mandate by providing benefits or monetary consideration.

(4) For a tax or assessment based total payroll for which a licensee is liable, the licensee may apply a small business allowance or other allowance or exemption available to the respective client for which each respective covered employee performed services for purpose of computing the tax.

Section 40‑68‑200. (A) For the purposes of Chapter 8, Title 41, the client and not the licensee is considered the private employer of covered employees. A client may comply with Chapter 8, Title 41 by contracting with the licensee to perform the work authorizations required pursuant to that chapter on behalf of the client.

(B) A licensee:

(1) may perform the work authorization and verification required by Chapter 8, Title 41 on behalf of a client pursuant to a professional employer agreement or other written contract; and

(2) must comply with any guidance and rules for professional employer organizations issued pursuant to federal immigration laws for the proper completing and maintaining of federal employment eligibility verification forms or documents.

Section 40‑68‑210. When a complaint is filed against a licensee with the department regarding any insurance issue, the Department of Insurance shall investigate the complaint.

Section 40‑68‑220. (A) For the purposes of this section, ‘conviction’ means a plea of guilty or nolo contendere or a finding of guilt.

(B) A person may not:

(1) engage in a professional employer service without holding a license pursuant to this chapter;

(2) use the name or title ‘staff leasing services company’, ‘licensed staff leasing services company’, ‘licensed staff leasing services group’, or ‘professional employer organization’, ‘licensed professional employer organization’, ‘licensed professional employer organization group’, ‘professional employer organization group’, ‘staff leasing services group’, or otherwise represent that it is licensed pursuant to this chapter, unless that entity holds a license issued pursuant to this chapter;

(3) represent as his own the license of another person or represent that a person is licensed if he does not hold a license;

(4) give false or forged evidence to the department in connection with an initial or renewal license or in connection with a disciplinary proceeding pursuant to this chapter;

(5) use or attempt to use a license that has expired or been revoked;

(6) offer an employee a self‑funded, self‑insured, or other employee benefit plan not licensed pursuant to Title 38, unless the program is maintained by the client individually for the sole benefit of participating covered employees; or

(7) misrepresent that a self‑funded, self‑insured, or unlicensed benefit plan is licensed pursuant to Title 38 or otherwise in compliance with ERISA.

(C) The department may take disciplinary action:

(1) against a licensee for:

(a) the conviction of a licensee or a controlling person of a licensee of bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;

(b) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the operation of a professional employer organization or the ability of the licensee or a controlling person of a licensee to operate a professional employer organization;

(c) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the classification, misclassification, or under‑reporting of employees pursuant to the South Carolina Workers’ Compensation Act;

(d) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the establishment or maintenance of a self‑insurance program, whether for health insurance, workers’ compensation insurance, or other insurance;

(e) the conviction of a licensee or a controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a professional employer organization;

(f) engaging in a professional employer service without a license;

(g) transferring or attempting to transfer a license issued pursuant to this chapter;

(h) violating this chapter or an order or regulation issued by the department pursuant to this chapter;

(i) failing to give the department written notice of a civil judgment or felony conviction of a controlling person within thirty days after the date on which the judgment or conviction is entered;

(j) failing to cooperate with an investigation, examination, or audit of the records of the licensee conducted by the insurance company of the licensee or the designee of that company, as provided by the insurance contract or as authorized by law by the Department of Insurance;

(k) failing to notify the department and the Department of Insurance within thirty days after the effective date of a change in ownership, principal business address, or the address of accounts and records;

(l) failing to correct a tax filing or payment deficiencies within a reasonable time as determined by the department;

(m) refusing, after reasonable notice, to meet reasonable health and safety requirements within the control of the licensee and made known to the licensee by a federal or state agency;

(n) failing to correct a delinquency in the payment of an insurance premium of the licensee within a reasonable time;

(o) failing to correct a delinquency in the payment of an employee benefit plan premiums or contributions within a reasonable time;

(p) knowingly or without sufficient inquiry, maintaining, sponsoring, offering, endorsing, or otherwise proffering self‑insured, self‑funded, or other employee benefit plans that are not licensed by the Department of Insurance;

(q) knowingly making a material misrepresentation to an insurance company, the department, or another governmental agency;

(r) an adverse final action by a state or federal regulatory agency for violations within the scope or control of the licensee; or

(s) in case of a professional employer organization or group that has qualified for licensing pursuant to Section 40‑68‑50, failing to notify the department within thirty days of a change in the status of its certification with the independent and qualified assurance organization; or

(2) a violation of subsection (B).

(D) Upon finding that a licensee has violated one or more provisions of this section, the department may:

(1) deny an application for a license;

(2) revoke, restrict, suspend, or refuse to renew a license;

(3) impose an administrative penalty in an amount not less than one thousand dollars for each violation, but not more than fifty thousand dollars;

(4) issue a reprimand;

(5) issue a cease and desist order; or

(6) place the licensee on probation for a period and subject to conditions and restrictions that the department specifies.

(E) Upon the revocation or suspension of a license, the licensee immediately shall return the license to the department and may not:

(1) solicit any new clients; or

(2) enter into or execute any additional contracts for professional employer services.

(F) A person aggrieved by a disciplinary action, a denial of an application for a new or renewal license, a revocation or suspension of a license, or a determination that a controlling person is unqualified may request a contested hearing before the Administrative Law Court pursuant to the procedural rules of that court. If a party fails to request a contested case hearing within the time provided in these rules, the administrative order becomes final and the department may bring action to enforce the order pursuant to Section 1‑23‑600(F).

(G) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been corrected. If the department refuses to reinstate or renew the license, the affected licensee may request a contested case hearing before the Administrative Law Court pursuant the procedural rules of that court.

(H) A licensee who is found to be engaged in unlawful conduct may be assessed the reasonable costs necessary to the investigation, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this chapter.

(I) The department or the Attorney General may file an action in the Administrative Law Court or circuit court, as appropriate, to enforce the provisions of this chapter.”

SECTION 2. Section 12‑54‑240(B) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

“(B) Nothing in this section prohibits the:

(1) publication of statistics classified to prevent the identification of particular reports or returns and the items included on them, or the inspection by the Attorney General or other legal representative of the State of the report or return of a taxpayer (a) who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted to recover a tax or a penalty imposed by this chapter, or (b) who has applied for review of an adjustment proposed by the department, or (c) filing a petition for redetermination of a deficiency assessed by the department. Reports and returns must be preserved for six years and after until the department orders them to be destroyed;

(2) examination of records, returns, and reports held by the department by persons employed by the State Auditor’s Office annually to examine the books, accounts, receipts, disbursements, vouchers, and records of the department as required by Section 11‑7‑20;

(3) examination of records, returns, and reports held by the department by persons retained on an independent contract basis by the State Auditor’s Office exclusively for the purpose of auditing statewide financial statements, or by persons retained on an independent contract basis by the department to collect delinquent taxes;

(4) transfer of funds and the submission of taxpayer home addresses and corrected social security numbers to the Department of Social Services Child Support Enforcement Division in accordance with Section 12‑56‑30;

(5) inspection of returns by officials of other jurisdictions in accordance with Section 12‑54‑220;

(6) disclosure of a deficiency assessment to a probate court or to an attorney conducting a closing, the filing of a tax lien for uncollected taxes, and the issuance of a notice of levy;

(7) submission of taxpayer names, home addresses, and social security numbers to the State Election department and Department of Motor Vehicles to effect the purposes of Section 14‑7‑130;

(8) exchange of information pursuant to Section 12‑54‑260 between the department and the collecting agency necessary to implement that section;

(9) disclosure of information pursuant to Section 12‑4‑310(5) to county and municipal officials;

(10) verification of information to the Retirement Systems Division of the State Budget and Control Board pursuant to Section 12‑4‑360;

(11) disclosure of information contained on a return to the South Carolina Employment Security Commission, Department of Revenue, or to the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau;

(12)(a) disclosure to a state agency, county auditor, or county assessor of whether a resident or nonresident tax return was filed by a particular taxpayer, whether the return is joint or individual, the name of a taxpayer filing jointly with the taxpayer, the taxpayer’s address as shown on the return, and what county code of residence is contained on the return;

(b) disclosure to a county auditor or county assessor of whether the four percent assessment pursuant to Section 12‑43‑220(c)(1) has been claimed by a taxpayer in a county;

(13) Reserved;

(14) disclosure and presentation of documents and other information in a bankruptcy proceeding relating to a claim or potential claim, including submission of the claim; disclosure of documents and information to the Trustee and U. S. Trustee; and disclosure of documents and information to the debtor in bankruptcy and the debtor’s attorney;

(15) disclosure of information in accordance with the provisions of Article 5, Chapter 55 of Title 38, the ‘Omnibus Insurance Fraud and Reporting Immunity Act’;

(16) disclosure of information pursuant to Section 31‑3‑50. The public housing authority making this request is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible;

(17) disclosure of information to the Secretary of State about a taxpayer who failed to pay a tax or fee or file a return, where the Secretary of State has the power to dissolve administratively the taxpayer or to revoke the taxpayer’s authority to transact business in this State for failure to pay taxes or fees or file returns~~.~~;

(18) disclosure of specific information to a United States Senator from South Carolina, a United States Representative from South Carolina, a South Carolina Constitutional Officer, or a member of the South Carolina General Assembly in connection with a taxpayer’s written inquiry for assistance to the elected official, who has then referred the taxpayer to the South Carolina Department of Revenue for assistance~~.~~;

(19) disclosure of information to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee pursuant to Section 12‑4‑380~~.~~;

(20) submission of taxpayer names and home addresses to the director of the South Carolina Retirement System to effectuate the provisions of Section 9‑1‑1650 relating to the disposition of inactive accounts~~.~~;

(21) disclosure of information, including statistics classified to prevent their identification to certain items on reports or returns, filed in a return pursuant to Chapter 36, Title 12, for accommodations taxes imposed pursuant to Section 12‑36‑920 and sales and use taxes collected by and reported to the Department of Parks, Recreation and Tourism including, but not limited to, statistics reflecting tourism activity;

(22) disclosure of information contained in a return filed pursuant to Article 17, Chapter 21, Title 12, for the purpose of complying with the Tourism Infrastructure Admissions Tax Act~~.~~;

(23) disclosure of any information on any return that has been filed with the Department of Revenue to the Department of Health and Human Services for the purpose of verifying Medicaid eligibility~~.~~;

(24) disclosure of information pursuant to a subpoena issued by the State Grand Jury of South Carolina~~.~~;

(25) exchange of information between the department and the Department of Commerce pursuant to Section 12‑6‑3375~~.~~;

(26) disclosure of information referred to in Section 12‑60‑3312~~.~~;

(27) disclosure of information to the State Treasurer necessary for the administration and enforcement of the Uniform Unclaimed Property Act;

(28) exchange of information between the department, the Department of Commerce and its agency, the Venture Capital Authority, and the Department of Insurance for the purpose of registering and verifying the existence, possession, transfer, and use of tax credits pursuant to Chapter 45 ~~of~~, Title 11~~.~~;

(29) disclosure of information related to payroll withholding taxes of businesses to the Department of Consumer Affairs in conjunction with the licensing and regulation of professional employer organizations by the department pursuant to Chapter 68, Title 40.”

SECTION 3. This act takes effect upon approval by the Governor.

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