**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑68‑65 SO AS TO PROVIDE FOR THE DETERMINATION OF TAX CREDITS AND ECONOMIC INCENTIVES BASED ON EMPLOYMENT WITH RESPECT TO CLIENT COMPANIES OF PROFESSIONAL EMPLOYER ORGANIZATIONS; TO AMEND SECTION 40‑68‑55, RELATING TO THE ABILITY OF THE DEPARTMENT OF INSURANCE TO PROVIDE BY REGULATION FOR THE ACCEPTANCE OF AFFIDAVIT OR CERTIFICATION OF APPROVAL OF QUALIFIED ASSURANCE ORGANIZATIONS, SO AS TO DELETE THE REQUIREMENT THAT THESE FUNCTIONS BE PROVIDED BY REGULATION; TO AMEND SECTION 40‑68‑60, RELATING TO THE REQUIREMENTS OF PROFESSIONAL EMPLOYMENT ORGANIZATION SERVICES AGREEMENTS BETWEEN PROFESSIONAL EMPLOYER ORGANIZATIONS AND ASSIGNED EMPLOYEES, SO AS TO DELETE THE REQUIREMENT THAT TERMS MUST BE ESTABLISHED BY WRITTEN CONTRACT, AND INSTEAD TO PROVIDE ORGANIZATIONS ONLY SHALL PROVIDE ASSIGNED EMPLOYEES WITH WRITTEN NOTICE OF HOW THE AGREEMENT AFFECTS THEM; TO AMEND SECTION 40‑68‑70, RELATING TO THE REQUIREMENTS OF PROFESSIONAL EMPLOYMENT ORGANIZATION SERVICES AGREEMENTS BETWEEN PROFESSIONAL EMPLOYER ORGANIZATIONS AND CLIENT COMPANIES, SO AS TO CLARIFY THAT THE TERMS OF THE AGREEMENT MUST BE ESTABLISHED BY WRITTEN CONTRACT; TO AMEND SECTION 40‑68‑150, RELATING TO CERTAIN PROHIBITED ACTS, SO AS TO PROVIDE PROFESSIONAL EMPLOYER ORGANIZATIONS SHALL NOT ENGAGE IN THE SALE OF INSURANCE OR ACT AS THIRD PARTY ADMINISTRATORS, AND TO PROVIDE THAT THE SPONSORING AND MAINTAINING OF EMPLOYEE BENEFIT PLANS FOR THE BENEFIT OF ASSIGNED EMPLOYEES DOES NOT CONSTITUTE THE SALE OF INSURANCE; AND TO REPEAL SECTION 40‑68‑45 RELATING TO CONTINUING PROFESSIONAL EDUCATION.

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 by adding:

“Section 40‑68‑65. For purposes of determining tax credits and other economic incentives provided by this State or another governmental entity, and based on employment, an assigned employee must be considered an employee solely of the client company. A client company is entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of assigned employees of the client company. The client company shall continue to qualify for this benefit, incentive or credit regardless of whether the professional employer organization is the W‑2 reporting employer. If the grant or amount of such an incentive is based on the number of employees, then each client company must be treated as employing only those employees assigned to the client company. An assigned employee working for another client company of the professional employer organization may not be counted. A professional employer organization shall provide, upon request by a client company, an agency, or a department of this State, employment information reasonably required by any agency or department of this State responsible for the administration of such a tax credit or economic incentive and necessary to support any request, claim, application, or other action by a client company seeking any such tax credit or economic incentive.”

SECTION 2. Section 40‑68‑55 of the 1976 Code is amended to read:

“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 3. Section 40‑68‑60(A) and (B) of the 1976 Code is amended to read:

“(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~~ general nature of the employee relationship among the professional employer organization, client company, and assigned employees must be provided to each assigned employee by delivering it to the employee ~~personally~~ within ten days ~~after executing the agreement~~ of the effective date of the contract between the licensee and the client company. 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 or the licensee may provide this notice separately.”

SECTION 4. Section 40‑68‑70(A) of the 1976 Code is amended to read:

“(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. 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.”

SECTION 5. Section 40‑68‑150 of the 1976 Code is amended to read:

“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 professional employer organization shall not engage in the sale of insurance or act as a third party administrator. The sponsoring and maintaining of employee benefit plans for the benefit of assigned employees does not constitute the sale of insurance.

(~~B~~C) 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 6. Section 40‑68‑45 of the 1976 Code is repealed.

SECTION 7. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑