

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on February 17, 2000 in Room 521-S of the Capitol.

All members were present except: Rep. Jerry Aday - excused
 Rep. Mike O'Neal - excused

Committee staff present: Bob Nugent, Revisor of Statutes
 Jerry Donaldson, Legislative Research Department
 Dennis Hodgins, Legislative Research Department
 Bev Adams, Committee Secretary

Conferees appearing before the committee:

Others attending: Guest list was not passed

HB 2812 - Regulation of professional employer organizations

Rep. Grant made a motion to amend the bill according to the balloon submitted by Ron Hein (Attachment 1). The motion was seconded by Rep. Welshimer. The motion carried. Chairman Lane will assign the bill to the Employment Security Advisory Council.

HB 2767 - Transfer of maps of underground mines to control of state geologist

Rep. Grant made a motion to pass out the bill favorably and place it on the consent calendar. Rep. Ruff seconded the motion. The motion carried.

HB 2769 - Variances for nonconforming boilers and pressure vessels.

A motion was made by Rep. Huff to pass out the bill favorably and place it on the consent calendar. The motion was seconded by Rep. Beggs. The motion carried.

HB 2456 - Locksmiths; photo identification, required.

Rep. Barnes made a motion to table the bill. It was seconded by Rep. Ruff. The motion passed.

Chairman Lane adjourned the meeting at 9:15 a.m.

The next scheduled meeting is Friday, February 18, 2000.

HEIN AND WEIR, CHARTERED

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February 16, 2000

Rep. Al Lane, Chairman
House Business, Commerce and Labor Committee
300 SW 10th Room 115S
Topeka, KS 66612-1504

RE: HB 2812

Dear Rep. Lane:

I represent the Heart of American Staffing Services Association. As you will recall, John Thomas testified on behalf of HASSA to your committee regarding HB 2812, dealing with professional employee organizations. At that time, he proposed some amendments to HB 2812 that, if adopted, would cause HASSA to change their position from one of opposition of HB 2812 to one of neutrality. Although he stated at the hearing that HASSA was neutral, it is neutral only if the amendments are adopted.

Although I had to step out of the hearing to testify at another hearing, it is my understanding that Bob Nugent also pointed out one other amendment that would need to be made.

Therefore, I have attached a copy of the balloon amendments that we believe would be necessary for us to withdraw our opposition to the bill. As the bill presently reads, we are concerned that it would have an adverse impact on temporary staffing services. I understand that it was not the intent of the bill's proponents that that be the case, and that they would have no objections to our proposed amendments, nevertheless we would have to oppose the bill unless these amendments are adopted in their entirety. If they are adopted, we would then be neutral on the bill and would let the bill pass or fail based upon its own merits. Thank you very much for considering our views.

Sincerely,



Ronald R. Hein

**HOUSE BUSINESS,
COMMERCE & LABOR
2-17-2000
Attachment 1**

cc: House Business, Commerce & Labor Committee Members
John Thomas, HASSA

HOUSE BILL No. 2812

By Committee on Business, Commerce and Labor

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9 AN ACT relating to professional employer organizations; establishing
10 certain minimum standards applicable to all professional employer or-
11 ganizations operating in the state.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. It is hereby declared that the professional employer or-
15 ganization provides a valuable service to commerce and the citizens of
16 this state. The rights and responsibilities of the professional employer
17 organization must be clearly defined. Two entities may both legitimately
18 be an employer of the same employee. The recognition of this relationship
19 should be based on the nature of the relationship as defined by a written
20 contract between a professional employer organization and a work-site
21 employer rather than left to the common law of the state. Professional
22 employer organizations shall be the coemployer or the employing unit for
23 all employees covered by a professional employer contract, and a profes-
24 sional employer organization may aggregate all employees under the in-
25 dividual contracts to the extent allowed by law.

26 Sec. 2. Unless the context clearly requires otherwise, these terms are
27 defined as follows:

28 (a) "Administrative fee" means those amounts charged by the pro-
29 fessional employer organization to the client over and above amounts
30 applied to the mandatory state and federal taxes, wages of assigned work-
31 ers and amounts applied to premiums or contributions for benefits pro-
32 vided for assigned workers.

33 (b) "Assigned worker" means a person having an employment rela-
34 tionship with both the professional employer organization and the client.

35 (c) "Client" means a person who contracts with a professional em-
36 ployer organization to obtain employer services from another person
37 through a professional employer arrangement.

38 (d) "Person" means an individual, an association, a company, a firm,
39 a partnership, a corporation or any other form of legally recognized entity.

40 (e) "Professional employer arrangement" means an arrangement, un-
41 der contract or whereby:

42 (1) A professional employer organization ~~assigns workers to perform~~ agrees to employ all or a majority of a client's workforce
43 ~~services for a client.~~

1 (2) the arrangement is intended to be, or is, ongoing rather than tem-
2 porary in nature;

3 (3) employer responsibilities for ~~assigned workers~~ are in fact shared under the arrangement
4 by the professional employer organization and the client; and

5 (4) for the purposes of this act, a professional employer arrangement
6 shall not include:

7 (A) Arrangements wherein a person, whose principal business activity
8 is not entering into professional employer arrangements, shares employ-
9 ees with a commonly owned company within the meaning of section
10 414(b) and (c) of the federal internal revenue code of 1986, as amended,
11 and which does not hold itself out as a professional employer organization.

12 (B) Arrangements in which a person assumes full responsibility for
13 the product or service performed by such person or such person's agents
14 and retains and exercises, both legally and in fact, a right of direction and
15 control over the individuals whose services are supplied under such con-
16 tractual arrangements, and such person and such person's agents perform
17 a specified function for the client which is separate and divisible from the
18 primary business or operations of the client.

19 ~~(C) A temporary help arrangement whereby an organization hires its
20 own employees and deploys them to a client to support or supplement
21 the client's employees.~~

22 (D) Any person otherwise subject to this act if, during any fiscal year
23 of the person commencing after July 1, 2000, the person pays total gross
24 wages to employees employed by the person in the state under one or
25 more professional employer arrangements which do not exceed 5% of the
26 total gross wages paid to all employees employed by the person in the
27 state during the same fiscal year under all arrangements described in
28 paragraph (4) and that each person does not advertise or hold itself out
29 to the public as providing services as a professional employer organization.

30 (f) "Professional employer organization" means any person engaged
31 in providing the services of employees pursuant to one or more profes-
32 sional employer arrangements or any person that represents itself to the
33 public as providing services pursuant to a professional employer
34 arrangement.

35 ~~(g) "Temporary employee" means a worker employed by an organi-
36 zation which hires its own employees and deploys them to a client to
37 support or supplement the client's full-time workforce.~~

38 Sec. 3. This act shall not apply to labor organizations as defined by
39 the national labor relations act or to any political subdivision of the state,
40 the United States, and any programs or agencies thereof, or to any entity
41 which meets the definitions contained in paragraph (e)(4) of section 2
42 and amendments thereto. A professional employer arrangement shall
43 have no effect on any existing collective bargaining agreements. Notwith-

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1 standing any statements in this subsection to the contrary nothing in this
2 act shall prohibit a client which is a party to a collective bargaining agree-
3 ment from contracting with a professional employer organization pro-
4 vided that the labor organization consents to such arrangement.

5 Sec. 4. (a) Each professional employer organization shall meet the
6 following standards:

7 (1) Have a written contract between the client and the professional
8 employer organization setting forth the responsibilities and duties of each
9 party. The contract shall contain a description of the type of services to
10 be rendered by the professional employer organization and the respective
11 rights and obligations of the parties and the contract shall also provide
12 that the professional employer organization:

13 (A) Reserves a right of direction and control over workers assigned
14 to the client's location. However, the client shall maintain such direction
15 and control over the assigned workers as is necessary to conduct the
16 client's business and without which the client would be unable to conduct
17 its business, discharge any fiduciary responsibility which it may have, or
18 comply with any applicable licensure;

19 (B) assumes responsibility for the withholding and remittance of pay-
20 roll-related taxes and employee benefits from its own accounts, as long
21 as the contract between the client and professional employer organization
22 remains in force; and

23 (C) retains authority to hire, terminate, discipline and reassign
24 workers.

25 (2) Provide written notice of the general nature of the relationship
26 between the professional employer organization and the client to the
27 assigned workers located at the client work site.

28 (b) A professional employer organization shall be considered an em-
29 ployer for the purposes of withholding state income tax of the assigned
30 workers pursuant to the Kansas income tax act.

31 (c) As long as the professional employer organization's contract with
32 the client remains in force, the professional employer organization shall
33 have a right to and shall assume the following responsibilities:

34 (1) Pay wages and collect, report and pay employment taxes of its
35 assigned workers from its own accounts;

36 (2) pay unemployment taxes as required by the employment security
37 law;

38 (3) secure and provide all required workers compensation coverage
39 for its assigned workers either in its own name or in its clients name.

40 (d) Both client and the professional employer organization shall be
considered the employer for the purpose of coverage under the workers
compensation act.

43 (e) Both the professional employer organization and its client shall

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1 be entitled to protection of the exclusive remedy provision of the workers
2 compensation act irrespective of which entity secures and provides such
3 workers compensation coverage.

4 (f) A recognized professional employer organization shall be deemed
5 the employer for the purposes of sponsoring and maintaining benefit and
6 welfare plans for its assigned workers.

7 (g) In the absence of any contrary provisions contained in the contract
8 between the client and the professional employer organization, the pro-
9 fessional employer organization arrangement that exists between a pro-
10 fessional employer organization and its clients shall be interpreted for the
11 purposes of insurance and bonding as follows:

12 (1) A professional employer organization shall not be liable for the
13 acts, errors or omissions of a client or of any assigned worker when such
14 client or worker is acting under the direction and control of a client. A
15 client shall not be liable for the acts, errors or omissions of a professional
16 employer organization or of any assigned worker of a professional em-
17 ployer organization when such professional employer organization or
18 worker is acting under the direction and control of the professional em-
19 ployer organization. This section shall not limit any contractual liability,
20 as may be expressly agreed upon, between the professional employer
21 organization and the client, nor shall this section limit the liabilities of
22 any professional employer organization or client as defined elsewhere in
23 this act; and

24 (2) assigned workers shall not be deemed employees of the profes-
25 sional employer organization for purposes of general liability insurance,
26 automobile insurance, fidelity bonds, surety bonds or employer's liability
27 insurance other than workers compensation insurance carried by the pro-
28 fessional employer organization unless the assigned workers are included
29 by specific reference in the applicable prearranged employment contract,
30 insurance contract or bond.

31 (h) The sale of professional employer services in conformance with
32 the provisions of this chapter shall not constitute the sale of insurance for
33 purposes of chapter 40 of the Kansas Statutes Annotated.

34 (i) A professional employer organization is not engaged in the unau-
35 thorized practice of an occupation, trade, or profession that is licensed,
36 certified or otherwise regulated by a governmental entity solely by en-
37 tering into a professional employer arrangement with a client that is so
38 licensed, certified or regulated.

39 Sec. 5. (a) Financing of unemployment insurance benefits for work-
40 ers assigned by a professional employer organization to a nonprofit or-
41 ganization or a unit of government shall be paid by the unit or organization
42 as provided by the employment security law. Unemployment insurance
43 benefits for workers assigned by a professional employer organization to

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1 any client other than a nonprofit organization or governmental unit shall
2 be made in accordance with the provisions of this section.

3 (b) During the term of a professional employer organization agree-
4 ment, a professional employer organization is liable in accordance with
5 the provisions of employment security law, for the payment of contribu-
6 tions, penalties and interest on wages paid to employees assigned to a
7 client company. The professional employer organization shall report and
8 pay all contributions under its state employer account number, using the
9 applicable contribution rate. ~~The provisions of this section do not apply
10 to an entity that provides temporary employees, as defined in this act, if
11 the entity is liable as an employer for the payment of contributions on
12 wages paid to temporary employees.~~

13 (c) When a client ceases to pay wages, such client shall be subject to
14 termination of its employer account and experience rating records in the
15 same manner as any other employer, in accordance with the provisions
16 of employment security law. If a client which has ceased to pay wages
17 subsequently resumes paying wages, it will be assigned the appropriate
18 experience rate in accordance with the provisions of employment security
19 law.

20 Sec. 6. (a) Nothing in this act exempts a client of a professional em-
21 ployer organization, nor an assigned worker, from any other state, local
22 or federal license or registration requirement.

23 (b) Any individual who must be licensed, registered or certified ac-
24 cording to law and who is an assigned worker is deemed an employee of
25 the client for purposes of the license, registration or certification.

26 (c) A professional employer organization does not engage in an oc-
27 cupation, trade or profession that is licensed, certified or otherwise reg-
28 ulated by a governmental entity solely by entering into a professional
29 employer arrangement with a client company or an assigned worker.

30 Sec. 7. This act shall take effect and be in force from and after its
31 publication in the statute book.