

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 212

SENATE BILL 1472

AN ACT

AMENDING TITLE 23, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4;
AMENDING SECTION 23-614, ARIZONA REVISED STATUTES; RELATING TO PROFESSIONAL
EMPLOYER ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 23, chapter 3, Arizona Revised Statutes, is amended
3 by adding article 4, to read:

4 ARTICLE 4. PROFESSIONAL EMPLOYER ORGANIZATIONS

5 23-561. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ADMINISTRATIVE FEE" MEANS THE FEE THAT IS CHARGED TO A CLIENT BY A
8 PROFESSIONAL EMPLOYER ORGANIZATION FOR PROFESSIONAL EMPLOYER SERVICES.
9 ADMINISTRATIVE FEE DOES NOT INCLUDE ANY AMOUNT OF THE FEE THAT IS APPLIED TO
10 WAGES, SALARIES, BENEFITS, WORKERS' COMPENSATION, PAYROLL TAXES, WITHHOLDING
11 OR OTHER ASSESSMENTS THAT THE PROFESSIONAL EMPLOYER ORGANIZATION PAYS TO OR
12 ON BEHALF OF COVERED EMPLOYEES UNDER A PROFESSIONAL EMPLOYER AGREEMENT.

13 2. "CLIENT" MEANS A PERSON WHO CONTRACTS WITH A PROFESSIONAL EMPLOYER
14 ORGANIZATION UNDER A PROFESSIONAL EMPLOYER AGREEMENT. A CLIENT DOES NOT
15 INCLUDE A PROFESSIONAL EMPLOYER ORGANIZATION.

16 3. "CO-EMPLOYER" MEANS A PROFESSIONAL EMPLOYER ORGANIZATION OR A
17 CLIENT.

18 4. "CO-EMPLOYMENT RELATIONSHIP" MEANS ALL OF THE FOLLOWING:

19 (a) A RELATIONSHIP BETWEEN CO-EMPLOYERS IF THE RIGHTS, DUTIES AND
20 OBLIGATIONS OF AN EMPLOYER THAT ARISE OUT OF AN EMPLOYMENT RELATIONSHIP ARE
21 ALLOCATED BETWEEN CO-EMPLOYERS SUBJECT TO A PROFESSIONAL EMPLOYER AGREEMENT
22 AND THIS ARTICLE, AND THE RELATIONSHIP IS INTENDED TO BE AN ONGOING
23 RELATIONSHIP AND NOT A TEMPORARY OR PROJECT SPECIFIC RELATIONSHIP.

24 (b) A RELATIONSHIP BETWEEN A PROFESSIONAL EMPLOYER ORGANIZATION AND A
25 COVERED EMPLOYEE THAT IS SUBJECT TO A PROFESSIONAL EMPLOYER AGREEMENT AND
26 THIS ARTICLE, THAT ALLOWS THE PROFESSIONAL EMPLOYER ORGANIZATION TO ENFORCE
27 THOSE RIGHTS AND THAT REQUIRES THE PROFESSIONAL EMPLOYER ORGANIZATION TO
28 PERFORM THOSE DUTIES AND OBLIGATIONS ALLOCATED TO THE PROFESSIONAL EMPLOYER
29 ORGANIZATION BY THE PROFESSIONAL EMPLOYER AGREEMENT OR THIS ARTICLE.

30 (c) A RELATIONSHIP BETWEEN A CLIENT AND A COVERED EMPLOYEE THAT IS
31 SUBJECT TO A PROFESSIONAL EMPLOYER AGREEMENT AND THIS ARTICLE, THAT ALLOWS
32 THE CLIENT TO ENFORCE THOSE RIGHTS AND REQUIRES THE CLIENT TO PERFORM THOSE
33 EMPLOYER OBLIGATIONS ALLOCATED TO THE CLIENT BY THE PROFESSIONAL EMPLOYER
34 AGREEMENT OR THIS ARTICLE OR THAT ARE NOT OTHERWISE ALLOCATED BY THE
35 PROFESSIONAL EMPLOYER AGREEMENT OR THIS ARTICLE.

36 5. "COVERED EMPLOYEE":

37 (a) MEANS AN INDIVIDUAL WHO HAS A CO-EMPLOYMENT RELATIONSHIP WITH A
38 PROFESSIONAL EMPLOYER ORGANIZATION AND A CLIENT, IF THE INDIVIDUAL:

39 (i) HAS EXECUTED A WRITTEN NOTICE OF THE CO-EMPLOYMENT RELATIONSHIP
40 WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

41 (ii) IS A PARTY TO A CO-EMPLOYMENT RELATIONSHIP WITH A PROFESSIONAL
42 EMPLOYER ORGANIZATION AND A CLIENT.

43 (iii) IS SUBJECT TO A PROFESSIONAL EMPLOYER AGREEMENT UNDER THIS
44 ARTICLE.

45 (b) INCLUDES AN INDIVIDUAL WHO IS AN OFFICER, DIRECTOR, SHAREHOLDER,
46 PARTNER OR MANAGER OF A CLIENT IF THE PROFESSIONAL EMPLOYER AGREEMENT

1 INCLUDES THE INDIVIDUAL AS A COVERED EMPLOYEE AND THE INDIVIDUAL ACTS AS A
2 MANAGER OR PERFORMS SERVICES FOR THE CLIENT.

3 6. "PERSON" MEANS ANY INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED
4 LIABILITY COMPANY OR OTHER LEGALLY RECOGNIZED ENTITY.

5 7. "PROFESSIONAL EMPLOYER AGREEMENT" MEANS A WRITTEN CONTRACT BETWEEN
6 A PROFESSIONAL EMPLOYER ORGANIZATION AND A CLIENT THAT PROVIDES FOR:

7 (a) THE CO-EMPLOYMENT OF COVERED EMPLOYEES.

8 (b) THE ALLOCATION AND SHARING BETWEEN THE CLIENT AND THE PROFESSIONAL
9 EMPLOYER ORGANIZATION OF EMPLOYER RESPONSIBILITIES WITH RESPECT TO A COVERED
10 EMPLOYEE, INCLUDING HIRING, FIRING AND DISCIPLINARY RESPONSIBILITIES.

11 (c) ANY OTHER RESPONSIBILITY REQUIRED BY THIS ARTICLE.

12 8. "PROFESSIONAL EMPLOYER ORGANIZATION":

13 (a) MEANS ANY PERSON WHO IS ENGAGED IN THE BUSINESS OF PROVIDING
14 PROFESSIONAL EMPLOYER SERVICES WHETHER OR NOT THE PERSON USES THE TERM
15 PROFESSIONAL EMPLOYER ORGANIZATION, STAFF LEASING COMPANY, REGISTERED STAFF
16 LEASING COMPANY, EMPLOYEE LEASING COMPANY OR ANY OTHER NAME.

17 (b) DOES NOT INCLUDE:

18 (i) ANY PERSON WHOSE PRINCIPAL BUSINESS ACTIVITY IS NOT ENTERING INTO
19 PROFESSIONAL EMPLOYER AGREEMENTS AND WHO DOES NOT HOLD ITSELF OUT AS A
20 PROFESSIONAL EMPLOYER ORGANIZATION.

21 (ii) A PERSON WHO SHARES EMPLOYEES WITH A COMMONLY OWNED COMPANY AS
22 DEFINED BY SECTIONS 414(b) AND 414(c) OF THE INTERNAL REVENUE CODE.

23 (iii) ARRANGEMENTS BY A PERSON WHO ASSUMES RESPONSIBILITY FOR THE
24 PRODUCT THAT IS PRODUCED OR SERVICE THAT IS PERFORMED BY THE PERSON AND WHO
25 RETAINS AND EXERCISES THE PRIMARY DISCRETION AND CONTROL OVER THE WORK
26 PERFORMED BY THE PERSON WHOSE SERVICES ARE SUPPLIED UNDER THE ARRANGEMENT.

27 (iv) A PERSON WHO HIRES TEMPORARY HELP FOR THE PURPOSE OF SUPPORTING
28 OR SUPPLEMENTING A CLIENT'S EMPLOYEES.

29 9. "PROFESSIONAL EMPLOYER SERVICES" MEANS THE SERVICE OF ENTERING INTO
30 A CO-EMPLOYMENT RELATIONSHIP UNDER THIS ARTICLE IN WHICH ALL OR A MAJORITY OF
31 THE EMPLOYEES WHO PROVIDE SERVICES TO A CLIENT OR TO A DIVISION OR WORK UNIT
32 OF THE CLIENT ARE COVERED EMPLOYEES.

33 10. "REGISTRANT" MEANS A PROFESSIONAL EMPLOYER ORGANIZATION THAT IS
34 REGISTERED UNDER THIS ARTICLE.

35 11. "TEMPORARY HELP SERVICES" MEANS SERVICES BY A PERSON CONSISTING OF:

36 (a) RECRUITING AND HIRING THE PERSON'S OWN EMPLOYEES.

37 (b) FINDING OTHER ORGANIZATIONS THAT NEED THE SERVICES OF EMPLOYEES
38 WHO ARE RECRUITED AND HIRED BY THE PERSON.

39 (c) ASSIGNING EMPLOYEES TO PERFORM WORK FOR OTHER ORGANIZATIONS TO
40 SUPPORT THAT ORGANIZATION'S WORKFORCES, INCLUDING COVERING EMPLOYEE ABSENCES,
41 SKILL SHORTAGES OR SEASONAL WORKLOADS OR PERFORMING SPECIAL ASSIGNMENTS OR
42 PROJECTS.

43 (d) CUSTOMARILY ATTEMPTING TO REASSIGN THE EMPLOYEES TO OTHER
44 ORGANIZATIONS WHEN THE EMPLOYEES COMPLETE EACH ASSIGNMENT.

1 23-562. Professional employer agreements: rights: notice

2 A. A PROFESSIONAL EMPLOYER AGREEMENT SHALL:

3 1. GOVERN THE CO-EMPLOYMENT RELATIONSHIP BETWEEN THE CLIENT AND THE
4 PROFESSIONAL EMPLOYER ORGANIZATION AND BETWEEN EACH CO-EMPLOYER AND EACH
5 COVERED EMPLOYEE.

6 2. RESERVE TO THE CLIENT THE RIGHT TO DIRECT AND CONTROL COVERED
7 EMPLOYEES TO THE EXTENT NECESSARY TO CONDUCT THE CLIENT'S BUSINESS AND TO
8 DISCHARGE ANY FIDUCIARY RESPONSIBILITY OR TO COMPLY WITH ANY LICENSING
9 REQUIREMENT THAT APPLIES TO THE CLIENT OR A COVERED EMPLOYEE.

10 3. REQUIRE THE PROFESSIONAL EMPLOYER ORGANIZATION TO PAY THE WAGES OF
11 COVERED EMPLOYEES, TO WITHHOLD, COLLECT, REPORT AND REMIT PAYROLL-RELATED AND
12 UNEMPLOYMENT TAXES AND TO MAKE PAYMENT FOR EMPLOYEE BENEFITS FOR COVERED
13 EMPLOYEES. FOR THE PURPOSES OF THIS PARAGRAPH, WAGES DO NOT INCLUDE
14 OBLIGATIONS BETWEEN A CLIENT AND A COVERED EMPLOYEE THAT EXCEED A COVERED
15 EMPLOYEE'S SALARY, BONUSES, COMMISSIONS, SEVERANCE PAY, DEFERRED
16 COMPENSATION, PROFIT SHARING OR VACATION, SICK OR OTHER PAID TIME OFF PAY
17 UNLESS THE PROFESSIONAL EMPLOYER ORGANIZATION EXPRESSLY AGREES TO ASSUME
18 LIABILITY FOR THE ADDITIONAL OBLIGATIONS IN THE PROFESSIONAL EMPLOYER
19 AGREEMENT.

20 4. PERMIT BOTH THE PROFESSIONAL EMPLOYER ORGANIZATION AND CLIENT TO
21 HAVE A RIGHT TO HIRE, TERMINATE AND DISCIPLINE COVERED EMPLOYEES.

22 5. SPECIFY WHETHER THE CLIENT OR THE PROFESSIONAL EMPLOYER
23 ORGANIZATION WILL PURCHASE AND MAINTAIN THE WORKERS' COMPENSATION POLICY FOR
24 COVERED EMPLOYEES FROM A CARRIER THAT IS LICENSED TO CONDUCT BUSINESS IN THIS
25 STATE. IF THE PROFESSIONAL EMPLOYER ORGANIZATION PURCHASES THE WORKERS'
26 COMPENSATION POLICY, THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL MAINTAIN
27 AND, IF REQUESTED BY THE CLIENT ON TERMINATION OF THE AGREEMENT, BE ABLE TO
28 PROVIDE TO THE CLIENT RECORDS REGARDING THE LOSS EXPERIENCE RELATED TO THE
29 WORKERS' COMPENSATION INSURANCE THAT IS PROVIDED TO THE COVERED EMPLOYEES.

30 B. A PROFESSIONAL EMPLOYER AGREEMENT SHALL NOT:

31 1. AFFECT, MODIFY OR AMEND ANY COLLECTIVE BARGAINING AGREEMENT OR ANY
32 RIGHTS OR OBLIGATIONS OF ANY CLIENT, PROFESSIONAL EMPLOYER ORGANIZATION OR
33 COVERED EMPLOYEE THAT ARE REQUIRED UNDER THE FEDERAL NATIONAL LABOR RELATIONS
34 ACT, THE FEDERAL RAILWAY LABOR ACT OR THIS TITLE.

35 2. AFFECT, MODIFY OR AMEND ANY STATE, LOCAL OR FEDERAL LICENSING,
36 REGISTRATION OR CERTIFICATION THAT IS REQUIRED BY ANY CLIENT OR COVERED
37 EMPLOYEE.

38 3. WITH RESPECT TO A BID, CONTRACT, PURCHASE ORDER OR AGREEMENT
39 ENTERED INTO WITH THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE, AFFECT
40 THE STATUS OF A CLIENT'S COMPANY AS A SMALL, MINORITY-OWNED, DISADVANTAGED OR
41 WOMAN-OWNED BUSINESS ENTERPRISE OR AS A HISTORICALLY UNDERUTILIZED BUSINESS
42 BECAUSE THE CLIENT ENTERED INTO A PROFESSIONAL EMPLOYMENT AGREEMENT WITH A
43 PROFESSIONAL EMPLOYER ORGANIZATION.

44 4. DIMINISH, ABOLISH OR REMOVE ANY RIGHTS OF COVERED EMPLOYEES TO ANY
45 CLIENTS OR OBLIGATIONS OF CLIENTS TO ANY COVERED EMPLOYEES THAT EXISTED
46 BEFORE THE EFFECTIVE DATE OF A PROFESSIONAL EMPLOYER AGREEMENT.

1 5. TERMINATE AN EMPLOYMENT RELATIONSHIP THAT EXISTED BEFORE THE
2 EFFECTIVE DATE OF A PROFESSIONAL EMPLOYER AGREEMENT.

3 6. ESTABLISH NEW OR ADDITIONAL ENFORCEABLE RIGHTS OF A COVERED
4 EMPLOYEE AGAINST A PROFESSIONAL EMPLOYER ORGANIZATION THAT ARE NOT
5 SPECIFICALLY ALLOCATED TO THE PROFESSIONAL EMPLOYER ORGANIZATION UNDER THE
6 PROFESSIONAL EMPLOYER AGREEMENT OR THIS ARTICLE.

7 C. UNLESS SPECIFICALLY PROVIDED IN A PROFESSIONAL EMPLOYER AGREEMENT
8 OR THIS ARTICLE:

9 1. THE CLIENT SHALL PERFORM ALL RESPONSIBILITIES THAT OTHERWISE APPLY
10 TO AN EMPLOYER IN AN EMPLOYMENT RELATIONSHIP.

11 2. THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL PERFORM ONLY THE
12 RESPONSIBILITIES THAT ARE SPECIFICALLY REQUIRED UNDER THIS ARTICLE OR A
13 PROFESSIONAL EMPLOYER AGREEMENT. THE RIGHTS, DUTIES AND OBLIGATIONS OF A
14 PROFESSIONAL EMPLOYER ORGANIZATION AS A CO-EMPLOYER WITH RESPECT TO ANY
15 COVERED EMPLOYEE ARE LIMITED TO THE RESPONSIBILITIES THAT ARE CONTAINED IN
16 THE PROFESSIONAL EMPLOYER AGREEMENT AND THAT ARISE DURING THE TERM OF
17 CO-EMPLOYMENT BY THE PROFESSIONAL EMPLOYER ORGANIZATION FOR THE COVERED
18 EMPLOYEES.

19 D. EVERY PROFESSIONAL EMPLOYER ORGANIZATION THAT ENTERS INTO A
20 PROFESSIONAL EMPLOYER AGREEMENT SHALL PROVIDE NOTICE TO EACH COVERED EMPLOYEE
21 WHO IS AFFECTED BY THE AGREEMENT. THE NOTICE MAY BE INCLUDED IN THE FORM OF
22 THE EMPLOYMENT DOCUMENTS THAT A COVERED EMPLOYEE COMPLETES FOR THE
23 PROFESSIONAL EMPLOYER ORGANIZATION.

24 23-563. Registration requirements; violation; rules; fees

25 A. EVERY PROFESSIONAL EMPLOYER ORGANIZATION THAT PROVIDES PROFESSIONAL
26 EMPLOYER SERVICES IN THIS STATE SHALL REGISTER WITH THE SECRETARY OF STATE.
27 THE SECRETARY OF STATE SHALL MAINTAIN A LIST OF ALL REGISTRANTS UNDER THIS
28 SECTION. THE SECRETARY OF STATE MAY PRESCRIBE FORMS NECESSARY FOR THE
29 ADMINISTRATION OF THIS SECTION.

30 B. EVERY PROFESSIONAL EMPLOYER ORGANIZATION THAT REGISTERS UNDER THIS
31 SECTION SHALL PROVIDE THE SECRETARY OF STATE THE FOLLOWING:

32 1. THE NAME OR NAMES UNDER WHICH THE PROFESSIONAL EMPLOYER
33 ORGANIZATION CONDUCTS BUSINESS.

34 2. THE ADDRESS OF THE PRINCIPAL PLACE OF BUSINESS OF THE PROFESSIONAL
35 EMPLOYER ORGANIZATION AND THE ADDRESS OF EACH OFFICE THAT THE PROFESSIONAL
36 EMPLOYER ORGANIZATION MAINTAINS IN THIS STATE.

37 3. THE PROFESSIONAL EMPLOYER ORGANIZATION'S TAXPAYER OR EMPLOYER
38 IDENTIFICATION NUMBER.

39 4. A LIST BY STATE OF EACH NAME UNDER WHICH THE PROFESSIONAL EMPLOYER
40 ORGANIZATION HAS OPERATED IN THE PRECEDING FIVE YEARS, INCLUDING ANY
41 ALTERNATIVE NAMES, NAMES OF PREDECESSORS AND, IF KNOWN, NAMES OF SUCCESSOR
42 BUSINESS ENTITIES.

43 5. A STATEMENT OF OWNERSHIP THAT INCLUDES THE NAMES AND BUSINESS
44 EXPERIENCE OF EVERY PERSON WHO OWNS OR CONTROLS TWENTY-FIVE PER CENT OR MORE
45 OF THE EQUITY INTEREST OF THE PROFESSIONAL EMPLOYER ORGANIZATION.

1 6. A STATEMENT OF MANAGEMENT THAT INCLUDES THE NAMES AND BUSINESS
2 EXPERIENCE OF ANY PERSON WHO SERVES AS PRESIDENT OR CHIEF EXECUTIVE OFFICER
3 OF THE PROFESSIONAL EMPLOYER ORGANIZATION OR ANY OTHER PERSON WHO HAS THE
4 AUTHORITY TO ACT AS A SENIOR EXECUTIVE OFFICER OF THE PROFESSIONAL EMPLOYER
5 ORGANIZATION.

6 7. A FINANCIAL STATEMENT THAT SETS FORTH THE FINANCIAL CONDITIONS OF
7 THE PROFESSIONAL EMPLOYER ORGANIZATION, THAT IS PREPARED WITH GENERALLY
8 ACCEPTED ACCOUNTING PRINCIPLES AND THAT IS COMPILED, REVIEWED OR AUDITED BY
9 AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. THE FINANCIAL STATEMENT SHALL BE
10 DATED NO EARLIER THAN ONE HUNDRED EIGHTY DAYS BEFORE THE DATE ON WHICH THE
11 FINANCIAL STATEMENT IS FILED WITH THE SECRETARY OF STATE. A PROFESSIONAL
12 EMPLOYER ORGANIZATION MAY SUBMIT COMPILED, REVIEWED OR AUDITED FINANCIAL
13 STATEMENTS.

14 8. A STATEMENT BY A CERTIFIED PROFESSIONAL ACCOUNTANT THAT THE
15 APPLICANT IS CURRENT WITH OBLIGATIONS THAT RELATE TO PAYROLL, PAYROLL-RELATED
16 TAXES, WORKERS' COMPENSATION INSURANCE PREMIUMS FOR COVERED EMPLOYEES AND
17 EMPLOYEE BENEFITS FOR THE PREVIOUS FOUR CALENDAR QUARTERS.

18 9. A CERTIFICATION THAT IS SIGNED BY THE CHIEF EXECUTIVE OFFICER OF
19 THE PROFESSIONAL EMPLOYER ORGANIZATION AND THAT STATES THE SUBMITTED
20 FINANCIAL STATEMENT IS A TRUE AND ACCURATE REPRESENTATION OF THE FINANCIAL
21 STATUS OF THE PROFESSIONAL EMPLOYER ORGANIZATION AS OF THE DATE THE FINANCIAL
22 STATEMENT WAS PREPARED.

23 C. EXCEPT FOR PROPER ADMINISTRATIVE PURPOSES, ALL RECORDS, REPORTS,
24 FINANCIAL STATEMENTS AND OTHER INFORMATION THAT IS OBTAINED FROM A
25 PROFESSIONAL EMPLOYER ORGANIZATION UNDER THIS ARTICLE BY THE SECRETARY OF
26 STATE ARE CONFIDENTIAL AND ARE NOT SUBJECT TO INSPECTION PURSUANT TO TITLE
27 39, CHAPTER 1, ARTICLE 2.

28 23-564. Initial registration; fee

29 A. BEGINNING MARCH 1, 2006, EVERY PROFESSIONAL EMPLOYER ORGANIZATION
30 IN THIS STATE SHALL FILE AN INITIAL REGISTRATION WITH THE SECRETARY OF STATE.
31 THE INITIAL REGISTRATION SHALL REMAIN VALID UNTIL THE PROFESSIONAL EMPLOYER
32 ORGANIZATION'S FIRST COMPLETED FISCAL YEAR THAT IS MORE THAN ONE YEAR AFTER
33 MARCH 1, 2006.

34 B. IF A PROFESSIONAL EMPLOYER ORGANIZATION IS NOT CONDUCTING BUSINESS
35 IN THIS STATE BEFORE MARCH 1, 2006, THE PROFESSIONAL EMPLOYER ORGANIZATION
36 SHALL FILE AN INITIAL REGISTRATION WITH THE SECRETARY OF STATE BEFORE
37 CONDUCTING BUSINESS IN THIS STATE.

38 C. EVERY PROFESSIONAL EMPLOYER ORGANIZATION SHALL PAY AN INITIAL
39 REGISTRATION FEE ESTABLISHED BY THE SECRETARY OF STATE WHEN AN INITIAL
40 REGISTRATION IS FILED WITH THE SECRETARY OF STATE.

41 D. THE SECRETARY OF STATE SHALL DETERMINE BY RULE THE FEES TO BE
42 CHARGED UNDER THIS ARTICLE.

43 23-565. Renewal registration; fee

44 WITHIN ONE HUNDRED TWENTY DAYS OF A REGISTRANT'S COMPLETED FISCAL YEAR,
45 EACH REGISTRANT SHALL FILE A RENEWAL REGISTRATION WITH THE SECRETARY OF
46 STATE. THE RENEWAL REGISTRATION SHALL INCLUDE ANY CHANGES TO THE INFORMATION

1 THAT WAS FILED IN THE REGISTRANT'S MOST RECENT REGISTRATION. EACH
2 PROFESSIONAL EMPLOYER ORGANIZATION SHALL PAY A RENEWAL REGISTRATION FEE
3 ESTABLISHED BY THE SECRETARY OF STATE WHEN THE RENEWAL REGISTRATION IS FILED
4 WITH THE SECRETARY OF STATE. EACH RENEWAL REGISTRATION SHALL INCLUDE THE
5 INFORMATION REQUIRED UNDER SECTION 23-563, SUBSECTION B, PARAGRAPHS 7,
6 8 AND 9.

7 23-566. Group registration

8 ONLY FOR PURPOSES OF REGISTRATION WITH THE SECRETARY OF STATE, IF TWO
9 OR MORE PROFESSIONAL EMPLOYER ORGANIZATIONS ARE HELD UNDER COMMON CONTROL OF
10 ANOTHER PERSON OR PERSONS WHO ARE ACTING IN CONCERT, THE PROFESSIONAL
11 EMPLOYER ORGANIZATIONS MAY FILE A REGISTRATION UNDER THIS ARTICLE AS A
12 PROFESSIONAL EMPLOYER ORGANIZATION GROUP. A PROFESSIONAL EMPLOYER
13 ORGANIZATION GROUP MAY SATISFY THE REPORTING AND FINANCIAL REQUIREMENTS UNDER
14 THIS ARTICLE ON A CONSOLIDATED BASIS.

15 23-567. Limited registration; fee

16 A. NOTWITHSTANDING SECTION 23-564 OR 23-565, A PROFESSIONAL EMPLOYER
17 ORGANIZATION MAY FILE A LIMITED REGISTRATION WITH THE SECRETARY OF STATE ON A
18 FORM PRESCRIBED BY THE SECRETARY OF STATE IF ALL OF THE FOLLOWING APPLY:

19 1. THE PROFESSIONAL EMPLOYER ORGANIZATION IS DOMICILED OUTSIDE OF THIS
20 STATE AND IS LICENSED OR REGISTERED AS A PROFESSIONAL EMPLOYER ORGANIZATION
21 IN ANOTHER STATE THAT HAS REQUIREMENTS THAT ARE SUBSTANTIALLY SIMILAR TO THE
22 REQUIREMENTS UNDER THIS ARTICLE.

23 2. THE PROFESSIONAL EMPLOYER ORGANIZATION DOES NOT MAINTAIN AN OFFICE
24 IN THIS STATE.

25 3. THE PROFESSIONAL EMPLOYER ORGANIZATION DOES NOT DIRECTLY SOLICIT
26 CLIENTS LOCATED OR DOMICILED IN THIS STATE.

27 4. THE PROFESSIONAL EMPLOYER ORGANIZATION DOES NOT HAVE MORE THAN
28 FIFTY COVERED EMPLOYEES WHO ARE EMPLOYED OR DOMICILED IN THIS STATE ON ANY
29 GIVEN DAY.

30 B. A LIMITED REGISTRATION SHALL BE VALID FOR ONE YEAR AND SHALL BE
31 RENEWED ANNUALLY WITHIN ONE HUNDRED TWENTY DAYS OF A REGISTRANT'S COMPLETED
32 FISCAL YEAR. EACH PROFESSIONAL EMPLOYER ORGANIZATION SHALL PAY A LIMITED
33 REGISTRATION FEE ESTABLISHED BY THE SECRETARY OF STATE WHEN THE LIMITED
34 REGISTRATION IS FILED OR RENEWED WITH THE SECRETARY OF STATE.

35 C. IF A PROFESSIONAL EMPLOYER ORGANIZATION SEEKS TO FILE A LIMITED
36 REGISTRATION WITH THE SECRETARY OF STATE, THE PROFESSIONAL EMPLOYER
37 ORGANIZATION SHALL PROVIDE THE SECRETARY OF STATE WITH SUFFICIENT INFORMATION
38 AND DOCUMENTATION THAT INDICATES THAT THE PROFESSIONAL EMPLOYER ORGANIZATION
39 QUALIFIES FOR A LIMITED REGISTRATION.

1 23-568. Alternative registration; fee

2 A. THE SECRETARY OF STATE MAY ESTABLISH BY RULE AN ALTERNATIVE
3 REGISTRATION THAT ACCEPTS AN AFFIDAVIT OR CERTIFICATION OF A BONDED,
4 INDEPENDENT AND QUALIFIED ASSURANCE ORGANIZATION THAT CERTIFIES THE
5 QUALIFICATIONS OF A PROFESSIONAL EMPLOYER ORGANIZATION UNDER SECTIONS 23-564,
6 23-565 OR 23-566. THE SECRETARY OF STATE SHALL APPROVE ANY BONDED,
7 INDEPENDENT AND QUALIFIED ASSURANCE ORGANIZATION THAT ISSUES AN AFFIDAVIT OR
8 CERTIFICATION UNDER THIS SUBSECTION.

9 B. AN ALTERNATIVE REGISTRATION IS VALID FOR ONE YEAR AND SHALL BE
10 RENEWED ANNUALLY WITHIN ONE HUNDRED TWENTY DAYS OF A REGISTRANT'S COMPLETED
11 FISCAL YEAR. EACH PROFESSIONAL EMPLOYER ORGANIZATION SHALL PAY AN
12 ALTERNATIVE REGISTRATION FEE ESTABLISHED BY THE SECRETARY OF STATE WHEN THE
13 ALTERNATIVE REGISTRATION IS FILED OR RENEWED WITH THE SECRETARY OF STATE.

14 23-569. Financial capability; bonding; exception

15 A. EVERY PROFESSIONAL EMPLOYER ORGANIZATION THAT IS LOCATED IN THIS
16 STATE SHALL MAINTAIN EITHER OF THE FOLLOWING:

17 1. A MINIMUM NET WORTH OF AT LEAST ONE HUNDRED THOUSAND DOLLARS.

18 2. A BOND, AN IRREVOCABLE LETTER OF CREDIT OR SECURITIES THAT HAVE A
19 MINIMUM MARKET VALUE OF ONE HUNDRED THOUSAND DOLLARS. THE BOND SHALL BE HELD
20 BY A DEPOSITORY DESIGNATED BY THE SECRETARY OF STATE IN ORDER TO SECURE THE
21 PAYMENT OF ALL TAXES, WAGES, BENEFITS OR OTHER ENTITLEMENTS INCLUDING AMOUNTS
22 EXPENDED BY THE INDUSTRIAL COMMISSION'S SPECIAL FUND UNDER SECTION 23-907
23 THAT ARE DUE TO BE PAID BY THE PROFESSIONAL EMPLOYER ORGANIZATION WITH
24 RESPECT TO COVERED EMPLOYEES IF THE PROFESSIONAL EMPLOYER ORGANIZATION FAILS
25 TO MAKE THE REQUIRED PAYMENTS. ANY BOND, IRREVOCABLE LETTER OF CREDIT OR
26 SECURITIES THAT ARE DEPOSITED UNDER THIS SUBSECTION SHALL NOT BE INCLUDED FOR
27 THE PURPOSES OF CALCULATING THE MINIMUM NET WORTH OF THE PROFESSIONAL
28 EMPLOYER ORGANIZATION UNDER THIS SUBSECTION.

29 B. THIS SECTION DOES NOT APPLY TO PROFESSIONAL EMPLOYER ORGANIZATIONS
30 THAT FILE A LIMITED REGISTRATION UNDER SECTION 23-567.

31 23-570. Liability

32 A. UNLESS OTHERWISE EXPRESSLY PROVIDED BY A PROFESSIONAL EMPLOYER
33 AGREEMENT OR OTHERWISE REQUIRED BY LAW, A CLIENT:

34 1. SHALL BE SOLELY RESPONSIBLE FOR:

35 (a) THE QUALITY, ADEQUACY AND SAFETY OF THE GOODS OR SERVICES PRODUCED
36 OR SOLD IN THE CLIENT'S BUSINESS.

37 (b) DIRECTING, SUPERVISING, TRAINING AND CONTROLLING THE WORK OF
38 COVERED EMPLOYEES WITH RESPECT TO THE BUSINESS ACTIVITIES OF THE CLIENT.

39 (c) THE ACTS, ERRORS OR OMISSIONS OF COVERED EMPLOYEES WHEN DIRECTING,
40 SUPERVISING, TRAINING AND CONTROLLING THE COVERED EMPLOYEES' WORK.

41 2. SHALL NOT BE LIABLE FOR THE ACTS, ERRORS OR OMISSIONS OF A
42 PROFESSIONAL EMPLOYER ORGANIZATION OR ANY COVERED EMPLOYEE OF THE CLIENT AND
43 THE PROFESSIONAL EMPLOYER ORGANIZATION IF THE COVERED EMPLOYEE IS ACTING
44 UNDER THE EXPRESS DIRECTION AND CONTROL OF THE PROFESSIONAL EMPLOYER
45 ORGANIZATION.

1 B. THIS SECTION DOES NOT LIMIT ANY CONTRACTUAL LIABILITY OR OBLIGATION
2 REQUIRED UNDER A PROFESSIONAL EMPLOYER AGREEMENT OR LIMIT THE LIABILITIES AND
3 OBLIGATIONS OF ANY PROFESSIONAL EMPLOYER ORGANIZATION OR CLIENT REQUIRED BY
4 THIS ARTICLE.

5 C. FOR THE PURPOSES OF GENERAL LIABILITY INSURANCE, FIDELITY BONDS,
6 SURETY BONDS, EMPLOYER'S LIABILITY THAT IS NOT COVERED UNDER WORKERS'
7 COMPENSATION AND LIQUOR LIABILITY INSURANCE THAT IS CARRIED BY THE
8 PROFESSIONAL EMPLOYER ORGANIZATION, A COVERED EMPLOYEE IS NOT AN EMPLOYEE OF
9 THE PROFESSIONAL EMPLOYER ORGANIZATION UNLESS THE COVERED EMPLOYEE IS
10 SPECIFICALLY INCLUDED BY REFERENCE IN THE PROFESSIONAL EMPLOYER AGREEMENT AND
11 APPLICABLE PREARRANGED EMPLOYMENT CONTRACT, INSURANCE CONTRACT OR BOND.

12 23-571. Tax obligations and incentives

13 A. THIS ARTICLE DOES NOT RELIEVE A CLIENT FROM PAYING ANY TAX
14 LIABILITY THAT IS DUE UNDER TITLE 42 OR 43.

15 B. ANY TAX ON PROFESSIONAL EMPLOYER SERVICES SHALL BE LIMITED TO THE
16 ADMINISTRATIVE FEES.

17 C. FOR THE PURPOSES OF TAX CREDITS AND ANY OTHER ECONOMIC INCENTIVES
18 PROVIDED BY THIS STATE THAT ARE BASED ON EMPLOYMENT, COVERED EMPLOYEES SHALL
19 BE DEEMED EMPLOYEES OF EITHER THE CLIENT OR THE PROFESSIONAL EMPLOYER
20 ORGANIZATION. EITHER THE CLIENT OR THE PROFESSIONAL EMPLOYER ORGANIZATION,
21 BUT NOT BOTH, SHALL BE ENTITLED TO THE BENEFIT OF ANY TAX CREDIT, ECONOMIC
22 INCENTIVE OR ANY OTHER BENEFIT RESULTING FROM THE EMPLOYMENT OF COVERED
23 EMPLOYEES OF THE CLIENT. IF THE AMOUNT OF ANY CREDIT OR INCENTIVE IS BASED
24 ON THE NUMBER OF EMPLOYEES, ONLY THE COVERED EMPLOYEES WHO ACTUALLY WORK FOR
25 THE CLIENT SHALL BE CONSIDERED EMPLOYED AND THE COVERED EMPLOYEES WHO WORK
26 FOR OTHER CLIENTS OF THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL NOT BE
27 CONSIDERED.

28 23-572. Services not insurance

29 A REGISTRANT UNDER THIS ARTICLE IS NOT ENGAGED IN THE SALE OF INSURANCE
30 BY OFFERING, MARKETING, SELLING, ADMINISTERING OR PROVIDING PROFESSIONAL
31 EMPLOYER ORGANIZATION SERVICES OR EMPLOYEE BENEFIT PLANS FOR COVERED
32 EMPLOYEES.

33 23-573. Rights; duties

34 A. COVERED EMPLOYEES MAY ENFORCE THOSE RIGHTS AGAINST A PROFESSIONAL
35 EMPLOYER ORGANIZATION THAT ARE ALLOCATED TO THE PROFESSIONAL EMPLOYER
36 ORGANIZATION OR THAT ARE SHARED BETWEEN THE PROFESSIONAL EMPLOYER
37 ORGANIZATION AND THE CLIENT UNDER A PROFESSIONAL EMPLOYER AGREEMENT OR THIS
38 ARTICLE.

39 B. ANY OTHER RIGHTS, DUTIES OR OBLIGATIONS THAT ARE ENFORCEABLE BY AN
40 EMPLOYEE UNDER THE LAWS OF THIS STATE SHALL REMAIN ENFORCEABLE AGAINST THE
41 CLIENT.

42 23-574. Licensing; application

43 A. A COVERED EMPLOYEE WHO IS REQUIRED TO BE LICENSED, REGISTERED OR
44 CERTIFIED UNDER THE LAWS OF THIS STATE SHALL BE DEEMED AN EMPLOYEE OF THE
45 CLIENT FOR PURPOSES OF THE LICENSE, REGISTRATION OR CERTIFICATION
46 REQUIREMENT.

1 B. A PROFESSIONAL EMPLOYER ORGANIZATION SHALL NOT BE DEEMED TO BE
2 ENGAGED IN ANY OCCUPATION, TRADE, PROFESSION OR OTHER ACTIVITY THAT IS
3 SUBJECT TO LICENSING, REGISTRATION OR CERTIFICATION REQUIREMENTS UNDER THE
4 LAWS OF THIS STATE SOLELY ON THE BASIS OF ENTERING INTO AND MAINTAINING A
5 CO-EMPLOYMENT RELATIONSHIP WITH A COVERED EMPLOYEE WHO IS REQUIRED TO BE
6 REGULATED OR CERTIFIED.

7 C. UNLESS OTHERWISE EXPRESSLY AGREED TO BY A CLIENT IN A PROFESSIONAL
8 EMPLOYMENT AGREEMENT, A CLIENT SHALL MAINTAIN THE RIGHT TO DIRECT AND CONTROL
9 THE PROFESSIONAL OR LICENSED ACTIVITIES OF THE COVERED EMPLOYEES AND THE
10 CLIENT'S BUSINESS.

11 23-575. Violations; classification; civil penalties; rules

12 A. A PERSON WHO OFFERS TO PROVIDE OR ACTUALLY PROVIDES PROFESSIONAL
13 EMPLOYER SERVICES OR USES THE NAME PROFESSIONAL EMPLOYER ORGANIZATION, STAFF
14 LEASING, EMPLOYEE LEASING OR ADMINISTRATIVE EMPLOYEE OR ANY OTHER TITLE
15 REPRESENTING A PROFESSIONAL EMPLOYER SERVICE WITHOUT FIRST REGISTERING WITH
16 THE SECRETARY OF STATE PURSUANT TO SECTION 23-563 IS GUILTY OF A CLASS 1
17 MISDEMEANOR.

18 B. A PERSON WHO KNOWINGLY PROVIDES FALSE OR FRAUDULENT INFORMATION TO
19 THE SECRETARY OF STATE UNDER THIS ARTICLE IS GUILTY OF A CLASS 1 MISDEMEANOR.

20 C. A PERSON WHO IS A CONTROLLING PERSON OF A PROFESSIONAL EMPLOYER
21 ORGANIZATION AND WHO COLLECTS PAYMENTS FROM A CLIENT REPRESENTING WAGES,
22 TAXES, BENEFIT PAYMENTS OR INSURANCE PAYMENTS AND FAILS TO REMIT THE FUNDS TO
23 THE APPROPRIATE GOVERNMENT OR PRIVATE ENTITY WITHIN A REASONABLE TIME IS
24 GUILTY OF THEFT AS PROVIDED IN SECTION 13-1802.

25 D. A PERSON WHO IS A CONTROLLING PERSON OF A CLIENT OF A PROFESSIONAL
26 EMPLOYER ORGANIZATION AND WHO FRAUDULENTLY OR FALSELY PROCURES OR ATTEMPTS TO
27 PROCURE SERVICES OR BENEFITS FROM A REGISTERED PROFESSIONAL EMPLOYER
28 ORGANIZATION WITHOUT HAVING MONIES THAT ARE ADEQUATE TO COMPENSATE THE
29 PROFESSIONAL EMPLOYER ORGANIZATION IS GUILTY OF A CLASS 4 FELONY.

30 E. IF A PERSON WILFULLY FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS
31 ARTICLE, KNOWINGLY MAKES A MATERIAL MISREPRESENTATION TO THE SECRETARY OF
32 STATE, VIOLATES SUBSECTION A, B OR C OF THIS SECTION OR IS GUILTY OF AN
33 OFFENSE RELATING TO THE OPERATION OF A PROFESSIONAL EMPLOYER ORGANIZATION,
34 THE SECRETARY OF STATE:

35 1. SHALL IMPOSE A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS
36 AGAINST THE PERSON FOR EACH VIOLATION. THE SECRETARY OF STATE SHALL DEPOSIT,
37 PURSUANT TO SECTIONS 35-146 AND 35-147, PENALTIES COLLECTED PURSUANT TO THIS
38 PARAGRAPH IN THE STATE GENERAL FUND.

39 2. MAY DENY AN APPLICATION FOR REGISTRATION.

40 3. MAY REVOKE, RESTRICT OR REFUSE TO RENEW A REGISTRATION.

41 4. MAY PLACE A REGISTRANT ON PROBATION FOR A PERIOD OF TIME DETERMINED
42 BY RULES ADOPTED BY THE SECRETARY OF STATE.

43 F. THE SECRETARY OF STATE SHALL ADOPT RULES FOR HEARINGS AND PENALTIES
44 FOR VIOLATIONS OF THIS ARTICLE OR RULES ADOPTED UNDER THIS ARTICLE.

1 23-576. Professional employer organization fund; use; exemption

2 A. THE PROFESSIONAL EMPLOYER ORGANIZATION FUND IS ESTABLISHED
3 CONSISTING OF FEES COLLECTED PURSUANT TO THIS ARTICLE. THE SECRETARY OF
4 STATE SHALL ADMINISTER THE FUND.

5 B. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND
6 SHALL BE USED BY THE SECRETARY OF STATE FOR THE PURPOSES OF ADMINISTERING
7 THIS ARTICLE.

8 C. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
9 RELATING TO LAPSING OF APPROPRIATIONS.

10 Sec. 2. Section 23-614, Arizona Revised Statutes, is amended to read:

11 23-614. Employing unit; temporary services employer; leasing
12 employer; definitions

13 A. "Employing unit" means an individual or type of organization,
14 including a partnership, association, trust, estate, joint-stock company,
15 insurance company or corporation, whether domestic or foreign, or the
16 receiver, trustee in bankruptcy, trustee or successor of any of the
17 foregoing, or the legal representative of a deceased person, which has, or
18 subsequent to January 1, 1936 had, one or more individuals performing
19 services for it within this state. Effective January 1, 1962, "employing
20 unit" shall include any federal instrumentality which is neither wholly nor
21 partially owned by the United States and which has one or more individuals
22 performing services for it within this state.

23 B. All individuals performing services within this state for an
24 employing unit which maintains two or more separate establishments within
25 this state shall be deemed to be performing services for a single employing
26 unit for all the purposes of this chapter.

27 C. Each individual employed to perform or to assist in performing the
28 work of any person in the service of an employing unit shall be deemed to be
29 engaged by the employing unit for all the purposes of this chapter, whether
30 the individual was hired or paid directly by the employing unit or by such
31 person, provided the employing unit had actual or constructive knowledge of
32 the work. Notwithstanding any other provision of this chapter except for ~~the~~
33 ~~provisions of~~ section 23-612.01, an individual who performs services in or
34 for a particular employing unit shall not be deemed to be in the employment
35 of such employing unit if such individual's wages for services in or for the
36 particular employing unit are paid by another employing unit, and if the
37 contributions required by this chapter on such wages are paid by such other
38 employing unit.

39 D. Notwithstanding any other provision of this chapter, whether an
40 individual or entity is the employer of specific employees shall be
41 determined by section 23-613.01, except as provided in subsections E and G of
42 this section with respect to a ~~leasing~~ PROFESSIONAL employer ORGANIZATION or
43 a temporary services employer.

44 E. A ~~leasing~~ PROFESSIONAL employer ORGANIZATION or a temporary
45 services employer that contracts to supply a worker to perform services for a
46 customer or client is the employer of the worker who performs the

1 services. A customer or client who contracts with an individual or entity
2 that is not a ~~leasing~~ PROFESSIONAL employer ORGANIZATION or a temporary
3 services employer to engage a worker to perform services is the employer of
4 the worker who performs the services. Except as provided in subsection F of
5 this section, an individual or entity that is not a ~~leasing~~ PROFESSIONAL
6 employer ~~nor~~ ORGANIZATION OR a temporary services employer, that contracts to
7 supply a worker to perform services to a customer or client and that pays
8 remuneration to the worker acts as the agent of the employer for purposes of
9 payment of remuneration.

10 F. In circumstances that are in essence a loan of an employee to
11 another employer and the direction and control of the manner and means of
12 performing the services changes to the employer to whom the employee is
13 loaned, the loaning employer continues to be the employer of the employee if
14 the loaning employer continues to pay remuneration to the employee, whether
15 or not reimbursed by the other employer. If the employer to whom the
16 employee is loaned pays remuneration to the employee for the services
17 performed, that employer is considered the employer for the purposes of any
18 remuneration paid to the employee by the employer, regardless of whether the
19 loaning employer also pays remuneration to the employee.

20 G. A PROFESSIONAL EMPLOYER ORGANIZATION SHALL REPORT AND PAY ALL
21 REQUIRED CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION FUND USING THE STATE
22 EMPLOYER ACCOUNT NUMBER AND THE CONTRIBUTION RATE OF THE PROFESSIONAL
23 EMPLOYER ORGANIZATION.

24 H. ON TERMINATION OF A CONTRACT BETWEEN A PROFESSIONAL EMPLOYER
25 ORGANIZATION AND A CLIENT OR THE FAILURE BY A PROFESSIONAL EMPLOYER
26 ORGANIZATION TO SUBMIT REPORTS OR MAKE TAX PAYMENTS AS REQUIRED BY THIS
27 CHAPTER, THE CLIENT SHALL BE TREATED AS A NEW EMPLOYER WITHOUT A PREVIOUS
28 EXPERIENCE RECORD IF THE CLIENT HAS BEEN SUBJECT TO A PROFESSIONAL EMPLOYER
29 AGREEMENT FOR AT LEAST TWO YEARS OR IF THE CLIENT IS NOT OTHERWISE ELIGIBLE
30 FOR AN EXPERIENCE RATING.

31 ~~G.~~ I. For THE purposes of this section: ~~,"leasing employer" or~~

32 1. "PROFESSIONAL EMPLOYER ORGANIZATION" HAS THE SAME MEANING
33 PRESCRIBED IN SECTION 23-561.

34 2. "Temporary services employer" means an employing unit that
35 contracts with clients or customers to supply workers to perform services for
36 the client or customer and that performs all of the following:

37 ~~1.~~ (a) Negotiates with clients or customers for such matters as the
38 time of work, the place of work, the type of work, the working conditions,
39 the quality of services and the price of services.

40 ~~2.~~ (b) Determines assignments or reassignments of workers, even
41 though workers retain the right to refuse specific assignments.

42 ~~3.~~ (c) Retains the authority to assign or reassign a worker to other
43 clients or customers if a worker is determined unacceptable by a specific
44 client or customer.

45 ~~4.~~ (d) Assigns or reassigns the worker to perform services for a
46 client or customer.

- 1 ~~5.~~ (e) Sets the rate of pay of the worker, whether or not through
2 negotiation.
3 ~~6.~~ (f) Pays the worker from its own account or accounts.
4 ~~7.~~ (g) Retains the right to hire and terminate workers.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.