

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 293

FINAL READING

Introduced by Ballard, 21.

Read first time January 15, 2025

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Professional Employer Organization
- 2 Registration Act; to amend section 48-2708, Reissue Revised Statutes
- 3 of Nebraska, and section 48-2706, Revised Statutes Cumulative
- 4 Supplement, 2024; to change provisions relating to health benefit
- 5 plans and employee welfare benefit plans; and to repeal the original
- 6 sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 48-2706, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 48-2706 (1) No person shall knowingly enter into a co-employment
4 relationship in which less than a majority of the employees of the client
5 in this state are covered employees or in which less than one-half of the
6 payroll of the client in this state is attributable to covered employees.

7 (2) Except as specifically provided in the Professional Employer
8 Organization Registration Act or in the professional employer agreement,
9 in each co-employment relationship:

10 (a) The client shall be entitled to exercise all rights and shall be
11 obligated to perform all duties and responsibilities otherwise applicable
12 to an employer in an employment relationship;

13 (b) The professional employer organization shall be entitled to
14 exercise only those rights and obligated to perform only those duties and
15 responsibilities specifically required by the act or in the professional
16 employer agreement. The rights, duties, and obligations of the
17 professional employer organization as co-employer with respect to any
18 covered employee shall be limited to those arising pursuant to the
19 professional employer agreement and the act during the term of co-
20 employment by the professional employer organization of such covered
21 employee; and

22 (c) Unless otherwise expressly agreed by the professional employer
23 organization and the client in a professional employer agreement, the
24 client retains the exclusive right to direct and control the covered
25 employees as is necessary to conduct the client's business, to discharge
26 any of the client's fiduciary responsibilities, or to comply with any
27 licensure requirements applicable to the client or to the covered
28 employees.

29 (3) Except as specifically provided in the Professional Employer
30 Organization Registration Act, the co-employment relationship between the
31 client and the professional employer organization, and between each co-

1 employer and each covered employee, shall be governed by the professional
2 employer agreement. Each professional employer agreement shall include
3 the following:

4 (a) The allocation of rights, duties, and obligations as described
5 in this section;

6 (b) A provision that the professional employer organization shall
7 have responsibility to pay wages to covered employees; to withhold,
8 collect, report, and remit payroll-related and unemployment taxes; and,
9 to the extent the professional employer organization has assumed
10 responsibility in the professional employer agreement, to make payments
11 for employee benefits for covered employees. For purposes of this
12 section, wages does not include any obligation between a client and a
13 covered employee for payments beyond or in addition to the covered
14 employee's salary, draw, or regular rate of pay, such as bonuses,
15 commissions, severance pay, deferred compensation, profit sharing, or
16 vacation, sick, or other paid time off pay, unless the professional
17 employer organization has expressly agreed to assume liability for such
18 payments in the professional employer agreement;

19 (c) A provision that the professional employer organization shall
20 have a right to hire, discipline, and terminate a covered employee as may
21 be necessary to fulfill the professional employer organization's
22 responsibilities under the act and the professional employer agreement.
23 The client shall have a right to hire, discipline, and terminate a
24 covered employee; and

25 (d) A provision that the responsibility to obtain workers'
26 compensation coverage for covered employees and for other employees of
27 the client from an insurer licensed to do business in this state and
28 otherwise in compliance with all applicable requirements shall be
29 specified in the professional employer agreement in accordance with
30 section 48-2709. The client shall not be relieved of its obligations
31 under the Nebraska Workers' Compensation Act to provide workers'

1 compensation coverage in the event that the professional employer
2 organization fails to obtain workers' compensation insurance for which it
3 has assumed responsibility.

4 (4) With respect to each professional employer agreement entered
5 into by a professional employer organization, such professional employer
6 organization shall provide written notice to each covered employee
7 affected by such agreement. The professional employer organization shall
8 provide, and the client shall post in a conspicuous place at the client's
9 worksite, the following:

10 (a) Notice of the general nature of the co-employment relationship
11 between and among the professional employer organization, the client, and
12 any covered employees; and

13 (b) Any notice required by the state relating to unemployment
14 compensation and the minimum wage.

15 (5) Except to the extent otherwise expressly provided by the
16 applicable professional employer agreement:

17 (a) A client shall be solely responsible for the quality, adequacy,
18 or safety of the goods or services produced or sold in the client's
19 business;

20 (b) A client shall be solely responsible for (i) directing,
21 supervising, training, and controlling the work of the covered employees
22 with respect to the business activities of the client or when such
23 employees are otherwise acting under the express direction and control of
24 the client and (ii) the acts, errors, or omissions of the covered
25 employees with regard to such activities or when such employees are
26 otherwise acting under the express direction and control of the client;

27 (c) A client shall not be liable for the acts, errors, or omissions
28 of a professional employer organization or of any covered employee of the
29 client and a professional employer organization when such covered
30 employee is acting under the express direction and control of the
31 professional employer organization;

1 (d) Nothing in this subsection shall limit any contractual liability
2 or obligation specifically provided in a professional employer agreement;
3 and

4 (e) A covered employee is not, solely as the result of being a
5 covered employee of a professional employer organization, an employee of
6 the professional employer organization for purposes of general liability
7 insurance, fidelity bonds, surety bonds, employer's liability which is
8 not covered by workers' compensation, or liquor liability insurance
9 carried by the professional employer organization unless the covered
10 employee is included for such purposes by specific reference in the
11 professional employer agreement and in any applicable prearranged
12 employment contract, insurance contract, or bond.

13 (6) When a professional employer organization obtains workers'
14 compensation coverage for its clients that is written by an authorized
15 insurer, it shall not be considered to be an insurer based on its
16 provision of workers' compensation insurance coverage to a client, even
17 if the professional employer organization charges the client a different
18 amount than it is charged by the authorized insurer.

19 (7) For purposes of this state or any county, municipality, or other
20 political subdivision thereof:

21 (a) Covered employees whose services are subject to sales tax shall
22 be deemed the employees of the client for purposes of collecting and
23 levying sales tax on the services performed by the covered employee.
24 Nothing contained in the Professional Employer Organization Registration
25 Act shall relieve a client of any sales tax liability with respect to its
26 goods or services;

27 (b) Any tax or assessment imposed upon professional employer
28 services or any business license or other fee which is based upon gross
29 receipts shall allow a deduction from the gross income or receipts of the
30 business derived from performing professional employer services that is
31 equal to that portion of the fee charged to a client that represents the

1 actual cost of wages and salaries, benefits, workers' compensation,
2 payroll taxes, withholding, or other assessments paid to or on behalf of
3 a covered employee by the professional employer organization under a
4 professional employer agreement;

5 (c) Any tax assessed or assessment or mandated expenditure on a per
6 capita or per employee basis shall be assessed against the client for
7 covered employees and against the professional employer organization for
8 its employees who are not covered employees co-employed with a client.
9 Any benefit or monetary consideration that meets the requirements of
10 mandates imposed on a client and that is received by covered employees
11 through the professional employer organization either through payroll or
12 through benefit plans sponsored by the professional employer organization
13 shall be credited against the client's obligation to fulfill such
14 mandates; and

15 (d) In the case of a tax or an assessment imposed or calculated upon
16 the basis of total payroll, the professional employer organization shall
17 be eligible to apply any small business allowance or exemption available
18 to the client for the covered employees for the purpose of computing the
19 tax.

20 (8)(a) Any health benefit plan offered by a professional employer
21 organization to its covered employees shall:

22 (i) Be fully insured by an authorized insurer; or

23 (ii) Be self-funded and:

24 (A) Utilize a third-party administrator licensed to conduct business
25 in this state;

26 (B) Hold all plan assets, including participant contributions, in a
27 trust account consistent with section 403 of the federal Employee
28 Retirement Income Security Act of 1974, 29 U.S.C. 1103, as such section
29 existed on January 1, 2025;

30 (C) Provide sound reserves for such health benefit plan as
31 determined using generally accepted actuarial standards of practice and

1 consistent with the prudence and loyalty standards of care for
2 fiduciaries under the federal Employee Retirement Income Security Act of
3 1974, as such act existed on January 1, 2025;

4 (D) Provide written notice to each covered employee participating in
5 such health benefit plan that the health benefit plan is self-funded or
6 is not fully insured; and

7 (E) File a report that contains all of the information required by
8 subdivision (b) of this subsection with the department on a quarterly
9 basis and within ninety days after the last day of the fiscal year of
10 such health benefit plan.

11 (b) The report described in subdivision (a)(ii)(E) of this
12 subsection shall include all of the following information relating to the
13 health benefit plan from the most recent fiscal year:

14 (i) A financial statement;

15 (ii) A statement from a qualified actuary that the rates charged and
16 any reserves, both incurred and incurred but not reported, are sufficient
17 to pay claims and associated expenses;

18 (iii) Confirmation of a stop-loss insurance policy that provides
19 coverage in excess of the health benefit plan's retention of one hundred
20 twenty-five percent of the health benefit plan's expected health claims
21 costs as determined on an aggregate basis listing the professional
22 employer organization as a named insured. A policy issued to satisfy the
23 requirements of this subdivision (8)(b)(iii) shall be evidenced in a
24 binder or policy by an insurer licensed to transact the business of
25 insurance in this state and contain a provision that the coverage shall
26 not be terminated by the insurer unless the professional employer
27 organization and the Commissioner of Labor receive a written notice of
28 termination from the insurer at least thirty days before the effective
29 date of the termination; and

30 (iv) A certificate of compliance that certifies that the health
31 benefit plan has been conducted in accordance with relevant laws of this

1 state that relate to professional employer organizations.

2 (c)(i) The department may hold a compliance hearing for any
3 professional employer organization if:

4 (A) The department provides written notice thirty days prior to such
5 hearing; and

6 (B) Such professional employer organization provides a self-funded
7 health benefit plan and fails to comply with subdivision (a)(ii) of this
8 subsection.

9 (ii) The hearing described in subdivision (c)(i) of this subsection
10 shall be conducted by the department and provide the professional
11 employer organization with the opportunity to be heard by the department.

12 (iii) Within thirty days after the hearing described in subdivision
13 (c)(ii) of this subsection of a professional employer organization, the
14 department may issue an order that requires such professional employer
15 organization to comply with the health benefit plan requirements in this
16 subsection. Any professional employer organization that is issued an
17 order under this subdivision (c)(iii) shall comply with such order within
18 thirty days after receiving such order.

19 (iv) The department shall revoke the registration under the
20 Professional Employer Organization Registration Act of any professional
21 employer organization that does not comply with an order issued under
22 subdivision (c)(iii) of this subsection. Such revocation shall occur
23 within thirty days after the final day for the professional employer
24 organization to comply with such order.

25 ~~(8) A professional employer organization shall not offer its covered~~
26 ~~employees any health benefit plan that is not:~~

27 ~~(a) Fully insured by an authorized insurer; or~~

28 ~~(b) Self-funded and in compliance with:~~

29 ~~(i) Sections 44-7601 to 44-7618, except subdivisions (1) and (2) of~~
30 ~~section 44-7606; and~~

31 ~~(ii) The federal Employee Retirement Income Security Act of 1974, as~~

1 ~~such act existed on January 1, 2024.~~

2 **Sec. 2.** Section 48-2708, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 48-2708 (1) A client and a professional employer organization shall
5 each be deemed an employer under the laws of this state for purposes of
6 sponsoring retirement and employee welfare benefit plans for its covered
7 employees.

8 (2) ~~An A fully insured~~ employee welfare benefit plan that includes a
9 health benefit plan offered to the covered employees of a single
10 professional employer organization shall be for purposes of state law a
11 single employee welfare benefit plan and shall not be considered a
12 multiple employer welfare arrangement, as defined in section 44-7603, and
13 shall be exempt from the registration requirements of the Multiple
14 Employer Welfare Arrangement Act.

15 (3) For purposes of the Small Employer Health Insurance Availability
16 Act, a professional employer organization shall be considered the
17 employer of all of its covered employees and all covered employees of any
18 client participating in a health benefit plan sponsored by a single
19 professional employer organization shall be considered employees of the
20 professional employer organization. Subject to any eligibility
21 requirements imposed by the plan or policy, the insurer shall accept and
22 insure all employees of the client and all beneficiaries of those
23 employees.

24 **Sec. 3.** Original section 48-2708, Reissue Revised Statutes of
25 Nebraska, and section 48-2706, Revised Statutes Cumulative Supplement,
26 2024, are repealed.