

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 624

An Act to amend and reenact §§ 38.2-1901, 65.2-101 and 65.2-801 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 38.2-1921.1 and 65.2-803.1, relating to workers' compensation and professional employer organizations generally.

[S 735]

Approved April 8, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1901, 65.2-101 and 65.2-801 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-1921.1 and 65.2-803.1 as follows:

§ 38.2-1901. Definitions.

As used in this chapter:

"Classification system" or "classification" means the plan, system, or arrangement for grouping risks with similar characteristics or a specified class of risk by recognizing differences in exposure to hazards.

"Client company" shall have the same meaning ascribed to it in § 65.2-101.

"Coemployee" shall have the same meaning ascribed to it in § 65.2-101.

"Experience rating" means a statistical procedure utilizing past risk experience to produce a prospective premium credit, debit, or unity modification.

"Market segment" means any line or class of insurance or, if it is described in general terms, any subdivision of insurance or any class of risks or combination of classes.

"Professional employer organization" shall have the same meaning ascribed to it in § 65.2-101.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization, including, at a minimum, the payment of wages of the coemployees, the reservation of the right of direction and control over the coemployees, and the responsibility for the withholding and payment of payroll taxes of the coemployees.

"Prospective loss costs" means historical aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. Prospective loss costs do not include provisions for profit or expenses other than loss adjustment expenses.

"Rate service organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, other than a joint underwriting association under § 38.2-1915, which assists insurers in ratemaking or filing by (i) collecting, compiling, and furnishing loss statistics; (ii) recommending, making, or filing prospective loss costs or supplementary rate information; or (iii) advising about rate questions, except as an attorney giving legal advice. Two or more insurers having a common ownership or operating in this Commonwealth under common management or control constitute a single insurer for purposes of this definition.

"Retrospective rating plan" means a rating plan that adjusts the premium for the insurance to which it applies on the basis of losses incurred during the period covered by that insurance.

"Statistical plan" means the plan, system, or arrangement used in collecting data for rate making or other purposes.

"Supplementary rate information" includes any manual or plan of rates, experience rating plan, statistical plan, classification, rating schedule, minimum premium, or minimum premium rule, policy fee, rating rule, rate-related underwriting rule, and any other information not otherwise inconsistent with the purposes of this chapter required by the Commission.

"Supporting data" includes:

1. The experience and judgment of the filer and, to the extent the filer wishes or the Commission requires, the experience and judgment of other insurers or rate service organizations;

2. The filer's interpretation of any statistical data relied upon;

3. Descriptions of the actuarial and statistical methods employed in setting the rates; and

4. Any other relevant information required by the Commission.

§ 38.2-1921.1. *Professional employer organization workers' compensation rating.*

A. Whenever any professional employer organization enters into an agreement with a client company to provide professional employer services, the experience rating of the professional employer organization shall be used for voluntary market workers' compensation insurance premium computation purposes with respect to such coemployees. In the event that the agreement between a client company and a professional employer organization is terminated, the coemployees shall become solely the employees of the former client company. If the coemployees have been covered as employees of the professional employer organization under a voluntary market workers' compensation insurance policy

for a period of three consecutive years or more, the workers' compensation insurance premium applicable to the policy of the former client company shall be based upon the rating of the professional employer organization until the former client employer has developed sufficient experience to be rated on its own or no longer qualifies for experience rating. If the coemployees have been covered as employees of the professional employer organization for a period of less than three consecutive years, the workers' compensation insurance premium applicable to the policy of the former client company shall be based upon the experience of the former client company which reflects its experience during the experience period specified by the approved experience rating plan, including, if available, experience incurred for coemployees under the professional employer services agreement.

B. Insurers may conduct periodic audits of any professional employer organization, including payrolls, operations and records as related to individual client company operations in order to ensure that the appropriate premium is charged for workers' compensation insurance coverage. Such audits may include audits of the client company in order to verify payroll, losses and classifications, and inspections of the premises where the coemployees work.

C. A professional employer organization may aggregate its coemployees under a single employer plan for the purpose of providing employee benefits provided that the professional employer organization meets the regulatory licensure and filing requirements promulgated by the Commission for fully insured multiple employer welfare arrangements. The following information required to be filed shall be confidential and shall not be disclosed to the public: (i) all information related to the names and addresses of employers participating in the plan and (ii) all information pertaining to the adequacy of the plan's level of reserves and contributions; provided that nothing herein shall prevent the Commission from using such information in any regulatory proceeding.

D. The Commission may promulgate regulations as it deems necessary for the administration of this section.

§ 65.2-101. Definitions.

As used in this title:

"Award" means the grant or denial of benefits or other relief under this title or any rule adopted pursuant thereto.

"Average weekly wage" means:

1. a. The earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided that results fair and just to both parties will be thereby obtained. When, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impractical to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.

b. When for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

2. Whenever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings. For the purpose of this title, the average weekly wage of the members of the Virginia National Guard, the Virginia Naval Militia and the Virginia State Defense Force, registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth, volunteer firefighters engaged in firefighting activities under the supervision and control of the Department of Forestry, and forest wardens shall be deemed to be such amount as will entitle them to the maximum compensation payable under this title; however, any award entered under the provisions of this title on behalf of members of the National Guard, the Virginia Naval Militia or their dependents, or registered members on duty or in training of the United States Civil Defense Corps of this Commonwealth or their dependents, shall be subject to credit for benefits paid them under existing or future federal law on account of injury or occupational disease covered by the provisions of this title.

3. Whenever volunteer firefighters, volunteer lifesaving or volunteer rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians and members of volunteer search and rescue organizations are deemed employees under this title, their average weekly wage shall be deemed sufficient to produce the minimum compensation provided by this title for injured workers or their dependents. For the purposes of workers' compensation insurance premium calculations, the monthly payroll for each volunteer firefighter or volunteer lifesaving or volunteer rescue squad member shall be deemed to be \$300.

4. The average weekly wage of persons, other than those covered in subdivision 3 of this definition, who respond to a hazardous materials incident at the request of the Department of Emergency Services shall be based upon the earnings of such persons from their primary employers.

"Change in condition" means a change in physical condition of the employee as well as any change in the conditions under which compensation was awarded, suspended, or terminated which would affect the right to, amount of, or duration of compensation.

"Client company" means any person that enters into an agreement for professional employer services with a professional employer organization.

"Coemployee" means an employee performing services pursuant to an agreement for professional employer services between a client company and a professional employer organization.

"Commission" means the Virginia Workers' Compensation Commission as well as its former designation as the Virginia Industrial Commission.

"Employee" means:

1. a. Every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except (i) one whose employment is not in the usual course of the trade, business, occupation or profession of the employer or (ii) as otherwise provided in subdivision 2 of this definition.

b. Any apprentice, trainee, or retrainee who is regularly employed while receiving training or instruction outside of regular working hours and off the job, so long as the training or instruction is related to his employment and is authorized by his employer.

c. Members of the Virginia National Guard and the Virginia Naval Militia, whether on duty in a paid or unpaid status or when performing voluntary service to their unit in a nonduty status at the request of their commander.

Income benefits for members of the National Guard or Naval Militia shall be terminated when they are able to return to their customary civilian employment or self-employment. If they are neither employed nor self-employed, those benefits shall terminate when they are able to return to their military duties. If a member of the National Guard or Naval Militia who is fit to return to his customary civilian employment or self-employment remains unable to perform his military duties and thereby suffers loss of military pay which he would otherwise have earned, he shall be entitled to one day of income benefits for each unit training assembly or day of paid training which he is unable to attend.

d. Members of the Virginia State Defense Force.

e. Registered members of the United States Civil Defense Corps of this Commonwealth, whether on duty or in training.

f. Except as provided in subdivision 2 of this definition, all officers and employees of the Commonwealth, including forest wardens, judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts, who shall be deemed employees of the Commonwealth.

g. Except as provided in subdivision 2 of this definition, all officers and employees of a municipal corporation or political subdivision of the Commonwealth.

h. Except as provided in subdivision 2 of this definition, (i) every executive officer, including president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation, municipal or otherwise and (ii) every manager of a limited liability company elected or appointed in accordance with the articles of organization or operating agreement of the limited liability company.

i. Policemen and firefighters, sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, and clerks of circuit courts and their deputies, officers and employees, who shall be deemed employees of the respective cities, counties and towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable.

j. Members of the governing body of any county, city or town in the Commonwealth, whenever coverage under this title is extended to such members by resolution or ordinance duly adopted.

k. Volunteers, officers and employees of any commission or board of any authority created or controlled by a local governing body, or any local agency or public service corporation owned, operated or controlled by such local governing body, whenever coverage under this title is authorized by resolution or ordinance duly adopted by the governing board of any county, city, town, or any political subdivision thereof.

l. Except as provided in subdivision 2 of this definition, volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians and members of volunteer search and rescue organizations, who shall be deemed employees of (i) the political subdivision or state institution of higher education in which the principal office of such volunteer fire company, volunteer lifesaving or rescue squad, volunteer law-enforcement chaplains, auxiliary or reserve police force, auxiliary or reserve deputy sheriff force, volunteer emergency medical technicians or members of volunteer search and rescue organizations is located if the governing body of such political subdivision or state institution of

higher education has adopted a resolution acknowledging such volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations as employees for the purposes of this title or (ii) in the case of volunteer firefighters or volunteer lifesaving or rescue squad members, the companies or squads for which volunteer services are provided whenever such companies or squads elect to be included as an employer under this title.

m. (1) Volunteer firefighters, volunteer lifesaving or rescue squad members, volunteer law-enforcement chaplains, auxiliary or reserve police, auxiliary or reserve deputy sheriffs, volunteer emergency medical technicians, members of volunteer search and rescue organizations and any other persons who respond to an incident upon request of the Department of Emergency Services, who shall be deemed employees of the Department of Emergency Services for the purposes of this title.

(2) Volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry, who shall be deemed employees of the Department of Forestry for the purposes of this title.

n. Any sole proprietor or all partners of a business electing to be included as an employee under the workers' compensation coverage of such business if the insurer is notified of this election. Any sole proprietor or the partners shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this title.

When any partner or proprietor is entitled to receive coverage under this title, such person shall be subject to all provisions of this title as if he were an employee; however, the notices required under §§ 65.2-405 and 65.2-600 of this title shall be given to the insurance carrier, and the panel of physicians required under § 65.2-603 shall be selected by the insurance carrier.

o. The independent contractor of any employer subject to this title at the election of such employer provided (i) the independent contractor agrees to such inclusion and (ii) unless the employer is self-insured, the employer's insurer agrees in writing to such inclusion. All or part of the cost of the insurance coverage of the independent contractor may be borne by the independent contractor.

When any independent contractor is entitled to receive coverage under this section, such person shall be subject to all provisions of this title as if he were an employee, provided that the notices required under §§ 65.2-405 and 65.2-600 are given either to the employer or its insurance carrier.

However, nothing in this title shall be construed to make the employees of any independent contractor the employees of the person or corporation employing or contracting with such independent contractor.

p. The legal representative, dependents and any other persons to whom compensation may be payable when any person covered as an employee under this title shall be deceased.

q. Jail officers and jail superintendents employed by regional jails or jail farm boards or authorities, whether created pursuant to Article 3.1 (§ 53.1-95.2 et seq.) or Article 5 (§ 53.1-105 et seq.) of Chapter 3 of Title 53.1, or an act of assembly.

2. "Employee" shall not mean:

a. Officers and employees of the Commonwealth who are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate. This exception shall not apply to any "state employee" as defined in § 51.1-124.3 nor to Supreme Court Justices, judges of the Court of Appeals, judges of the circuit or district courts, members of the Workers' Compensation Commission and the State Corporation Commission, or the Superintendent of State Police.

b. Officers and employees of municipal corporations and political subdivisions of the Commonwealth who are elected by the people or by the governing bodies, and who act in purely administrative capacities and are to serve for a definite term of office.

c. Any person who is a licensed real estate salesperson, or a licensed real estate broker associated with a real estate broker, if (i) substantially all of the salesperson's or associated broker's remuneration is derived from real estate commissions, (ii) the services of the salesperson or associated broker are performed under a written contract specifying that the salesperson is an independent contractor, and (iii) such contract includes a provision that the salesperson or associated broker will not be treated as an employee for federal income tax purposes.

d. Any taxicab or executive sedan driver, provided the Commission is furnished evidence that such individual is excluded from taxation by the Federal Unemployment Tax Act.

e. Casual employees.

f. Domestic servants.

g. Farm and horticultural laborers, unless the employer regularly has in service more than two full-time employees.

h. Employees of any person, firm or private corporation, including any public service corporation, that has regularly in service less than three employees in the same business within this Commonwealth, unless such employees and their employers voluntarily elect to be bound by this title. However, this exemption shall not apply to the operators of underground coal mines or their employees. An executive officer who is not paid salary or wages on a regular basis at an agreed upon amount and who rejects

coverage under this title pursuant to § 65.2-300 shall not be included as an employee for purposes of this subdivision.

i. Employees of any common carrier by railroad engaging in commerce between any of the several states or territories or between the District of Columbia and any of the states or territories and any foreign nation or nations, and any person suffering injury or death while he is employed by such carrier in such commerce. This title shall not be construed to lessen the liability of any such common carrier or to diminish or take away in any respect any right that any person so employed, or the personal representative, kindred or relation, or dependent of such person, may have under the act of Congress relating to the liability of common carriers by railroad to their employees in certain cases, approved April 22, 1908, or under §§ 8.01-57 through 8.01-62 or § 56-441.

j. Employees of common carriers by railroad who are engaged in intrastate trade or commerce. However, this title shall not be construed to lessen the liability of such common carriers or take away or diminish any right that any employee or, in case of his death, the personal representative of such employee of such common carrier may have under §§ 8.01-57 through 8.01-61 or § 56-441.

k. Except as provided in subdivision 1 of this definition, a member of a volunteer firefighting, lifesaving or rescue squad when engaged in activities related principally to participation as a member of such squad whether or not the volunteer continues to receive compensation from his employer for time away from the job.

l. Except as otherwise provided in this title, noncompensated employees and noncompensated directors of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

m. Any person performing services as a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization which sponsors an amateur sports event. For the purposes of this subdivision, "sports official" includes an umpire, referee, judge, scorekeeper, timekeeper or other person who is a neutral participant in a sports event. This shall not include any person, otherwise employed by an organization or entity sponsoring a sports event, who performs services as a sports official as part of his regular employment.

"Employer" includes (i) any person, the Commonwealth or any political subdivision thereof and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay and (ii) any volunteer fire company or volunteer lifesaving or rescue squad electing to be included and maintaining coverage as an employer under this title. If the employer is insured, it includes his insurer so far as applicable.

"Executive officer" means (i) the president, vice president, secretary, treasurer or other officer, elected or appointed in accordance with the charter and bylaws of a corporation and (ii) the managers elected or appointed in accordance with the articles of organization or operating agreement of a limited liability company. However, such term does not include noncompensated officers of corporations exempt from taxation pursuant to § 501 (c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954).

"Filed" means hand delivered to the Commission's office in Richmond or any regional office maintained by the Commission; sent by telegraph, electronic mail or facsimile transmission; or posted at any post office of the United States Postal Service by certified or registered mail. Filing by first-class mail, telegraph, electronic mail or facsimile transmission shall be deemed completed only when the application actually reaches a Commission office.

"Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. However, such term does not include any injury, disease or condition resulting from an employee's voluntary participation in employer-sponsored off-duty recreational activities which are not part of the employee's duties.

"Professional employer organization" means any person that enters into a written agreement with a client company to provide professional employer services.

"Professional employer services" means services provided to a client company pursuant to a written agreement with a professional employer organization whereby the professional employer organization initially employs all or a majority of a client company's workforce and assumes responsibilities as an employer for all coemployees that are assigned, allocated, or shared by the agreement between the professional employer organization and the client company.

"Staffing service" means any person, other than a professional employer organization, that hires its own employees and assigns them to a client to support or supplement the client's workforce. It includes temporary staffing services that supply employees to clients in special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

§ 65.2-801. Insurance or proof of financial ability to pay required.

A. Every employer subject to this title shall secure his liability thereunder by one of the following methods:

1. Insuring and keeping insured his liability in an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth;

2. Receiving a certificate pursuant to § 65.2-808 from the Workers' Compensation Commission authorizing such employer to be an individual self-insurer; or

3. Being a member in good standing of a group self-insurance association licensed by the State Corporation Commission; or

4. *Entering into an agreement with a professional employer organization for professional employer services which includes voluntary market workers' compensation insurance for coemployees of the professional employer organization and the client company procured from an insurer authorized to transact the business of workers' compensation insurance in this Commonwealth. A professional employer organization may obtain voluntary market workers' compensation insurance in its own name for all coemployees which it shares or which are assigned or allocated to it pursuant to the agreement between the professional employer organization and the client company. The client company shall maintain separate voluntary market workers' compensation insurance insuring any and all employees of the client company not insured through the policy obtained by the professional employer organization.*

B. An employer who satisfies the requirements of this section shall be certified by the Workers' Compensation Commission as an individual self-insurer and permitted to pay direct the compensation in the amount and manner and when due as provided for in this title. The Commission shall not certify an employer as a self-insurer unless it receives in such form as it requires satisfactory proof of the solvency of such employer, the financial ability of the employer to meet his obligations and the ability of the employer to pay or cause to be paid the compensation in the amount and manner and when due as provided for in this title. The Commission shall establish reasonable requirements and standards for approval of an employer as a self-insurer including, without limitation, the quality and amount of security deposits, bonds or indemnity, the amount of advance payments and reserves required, the investment of such funds, and the form and content of financial information to be submitted by the employer and the frequency of such submissions. For the purposes of any debt/equity ratio (total liabilities to net worth) minimum standard, a ratio of less than 2:2 shall be deemed satisfactory. The Commission shall, after notice and hearing, embody such requirements and standards and such other requirements as may be reasonably necessary for the purposes of this section in regulations. The Bureau of Insurance of the State Corporation Commission shall, at the request of the Commission, assist the Commission in establishing the reasonable requirements and standards for approval and certification of an employer as a self-insurer. The Workers' Compensation Commission may in its discretion require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

C. The State Treasurer shall be the custodian of securities deposited by the employer under the requirements of this section, or under § 65.2-802, and for such services he shall receive a compensation of one-tenth of one percent per year of the amount of securities deposited with him, payable by or on behalf of such employers.

§ 65.2-803.1. *Requirements for registration as professional employer organization; annual assessment.*

A. Any person desiring to engage in the business of providing professional employer services shall register with the Commission before it undertakes to provide such services.

B. Each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission within thirty days of all new or terminated, in whole or in part, client companies. Upon registration and annually thereafter, each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission of all client companies. Such notice shall be confidential and shall not be disclosed to the public, provided that the Commission may respond to inquiries as to whether a client company has workers' compensation coverage. Each such notification shall indicate, by client company, if the professional employer organization will provide voluntary market workers' compensation insurance and whether the client company will obtain separate workers' compensation insurance. The Commission may require such other information as it deems necessary for the administration of this section.

C. All agreements for professional employer services shall be in writing and shall provide a description of the respective rights and obligations of the professional employer organization and the client company. The professional employer organization shall provide a written summary of such rights and obligations to each coemployee, including information concerning filing for workers' compensation and unemployment benefits. No agreement for professional employer services shall alter or affect the terms and conditions of any collective bargaining agreement between the client company and its employees without the consent of the parties to such collective bargaining agreement.

D. A professional employer organization that is registered with the Commission and operating in compliance with the requirements of this section shall be deemed to be an employer of its coemployees and may assume responsibilities as an employer of its coemployees for the term of its agreement with a client company. A professional employer organization may secure and provide all required voluntary market workers' compensation insurance for its coemployees under a master workers' compensation

insurance policy in the name of the professional employer organization.

E. A professional employer organization shall notify in writing the client company and coemployees of its intent to terminate any agreement for professional employer services with a client company at the time of or prior to termination. Such notice shall advise the client company of its obligation to secure workers' compensation coverage. The professional employer organization shall provide a copy of such notice to the Commission and the insurer at the time notice is given to the client company. Workers' compensation insurance coverage shall continue until termination or for fifteen days after receipt of notice of termination by both the Commission and the client company, whichever is later. This section shall not alter the notice obligations of an insurer seeking to cancel workers' compensation coverage pursuant to subsection B of § 65.2-804. If a professional employer organization has received notice that its workers' compensation insurance policy will be cancelled or nonrenewed, the professional employer organization shall notify the client companies within fifteen days after receipt of the notice. Failure of the professional employer organization to provide such notice to the client companies subrogates the Commission, upon payment of a claim from the Uninsured Employer's Fund to any coemployee of a client company that did not receive notice, to any right to recover damages which the injured coemployee or his personal representative may have against the professional employer organization.

F. This section shall not exempt a client company from any other license requirements imposed under federal, state, or local law, and a coemployee shall be recognized as an employee of the client company for all purposes. For purposes of licensing requirements, a professional employer organization shall not be deemed to be engaged in the occupation, trade or profession of the client company solely through the provision of professional employer services to that client company.

G. Where a professional employer organization or a staffing service has obtained workers' compensation insurance to secure its obligations under this title with respect to compensation on account of injury or death by accident, the rights and remedies available to the employee or coemployee under this title shall be exclusive as to both the client company and the professional employer organization or staffing service in accordance with this title.

H. A professional employer organization that fails to comply with the provisions of this title or with the regulations of the Commission shall be subject to the requirements of Chapter 9 (§ 65.2-900 et seq.) of this title. The Commission is authorized to revoke or suspend any registration hereunder if the professional employer organization fails to comply with the provisions of this title or with the regulations of the Commission. If a registration is revoked as herein provided, the Commission may allow the professional employer organization to reregister upon application therefor if, when and after the conditions upon which revocation was based have been corrected and the professional employer organization has complied with all provisions of this title and applicable regulations. Whenever a registration is revoked or suspended the Commission may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the professional employer organization is located for an injunction to cause such professional employer organization to cease providing professional employer services. Suspension of a registration shall in all cases be for an indefinite time and the suspension may be lifted and rights under the registration fully or partially restored at such time as the Commission determines that the rights of the registrant appear to so require and the interests of the public will not be jeopardized by resumption of operation.

I. Notwithstanding any provision of this title to the contrary, each registered professional employer organization shall be assessed annually by the Commission, in addition to any other assessments provided in this title, an assessment in an amount not to exceed the sums necessary for the registration and supervision of all professional employer organizations. The assessment shall be apportioned and assessed and paid in proportion to the aggregate of the annual payroll of all coemployees shared by or assigned or allocated to the professional employer organization.

J. The Bureau of Insurance of the State Corporation Commission may request and shall receive information filed with the Commission by a professional employer organization. Such information shall be confidential and shall be used solely for informational purposes by the Bureau of Insurance and its staff.

K. No person shall solicit, negotiate, procure or effect contracts of insurance for or on behalf of a professional employer organization unless such person is licensed for that class of insurance as an insurance agent, as defined in § 38.2-1800.

L. The Commission may promulgate regulations as it deems necessary for the administration of this section.

2. That the provisions of this act shall be effective with respect to any workers' compensation insurance policy issued to or renewed with a professional employer organization on or after January 1, 2001.