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SENATE BILL NO. 588

Offered January 16, 2002

A BILL to amend and reenact § 65.2-803.1 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to workers' compensation; professional employer organizations; notice of insurance cancellation.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-803.1 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted as follows:

§ 65.2-803.1. (Effective until September 1, 2002) 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; however, nothing herein shall be interpreted to prohibit or limit the production of documents containing such information from the professional employer organization pursuant to an otherwise lawful subpoena issued by a court of competent jurisdiction. 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~~ ^{seven} 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

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59 under federal, state, or local law, and a coemployee shall be recognized as an employee of the client
60 company for all purposes. For purposes of licensing requirements, a professional employer organization
61 shall not be deemed to be engaged in the occupation, trade or profession of the client company solely
62 through the provision of professional employer services to that client company.

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

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

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

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

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

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

98 § 65.2-803.1. (Effective September 1, 2002) Requirements for registration as professional employer
99 organization; annual assessment.

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

102 B. Each registered professional employer organization shall notify the Commission and the Bureau of
103 Insurance of the State Corporation Commission within thirty calendar days of all new or terminated, in
104 whole or in part, client companies. Upon registration and annually thereafter, each registered
105 professional employer organization shall notify the Commission and the Bureau of Insurance of the State
106 Corporation Commission of all client companies. Such notice shall be confidential and shall not be
107 disclosed to the public, provided that the Commission may respond to inquiries as to whether a client
108 company has workers' compensation coverage; however, nothing herein shall be interpreted to prohibit
109 or limit the production of documents containing such information from the professional employer
110 organization pursuant to an otherwise lawful subpoena issued by a court of competent jurisdiction. Each
111 such notification shall indicate, by client company, if the professional employer organization will
112 provide voluntary market workers' compensation insurance and whether the client company will obtain
113 separate workers' compensation insurance. The Commission may require such other information as it
114 deems necessary for the administration of this section.

115 C. All agreements for professional employer services shall be in writing and shall provide a
116 description of the respective rights and obligations of the professional employer organization and the
117 client company. The professional employer organization shall provide a written summary of such rights
118 and obligations to each coemployee, including information concerning filing for workers' compensation
119 and unemployment benefits. No agreement for professional employer services shall alter or affect the
120 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 calendar 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~~^{seventeen} calendar 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 sell, solicit, or negotiate, as those terms are defined in § 38.2-1800, 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.

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