

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

5 [S 588]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**

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

10 § 65.2-803.1. (Effective until September 1, 2002) Requirements for registration as professional
11 employer organization; annual assessment.

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

14 B. Each registered professional employer organization shall notify the Commission and the Bureau of
15 Insurance of the State Corporation Commission within thirty days of all new or terminated, in whole or
16 in part, client companies. Upon registration and annually thereafter, each registered professional
17 employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation
18 Commission of all client companies. Such notice shall be confidential and shall not be disclosed to the
19 public, provided that the Commission may respond to inquiries as to whether a client company has
20 workers' compensation coverage; however, nothing herein shall be interpreted to prohibit or limit the
21 production of documents containing such information from the professional employer organization
22 pursuant to an otherwise lawful subpoena issued by a court of competent jurisdiction. Each such
23 notification shall indicate, by client company, if the professional employer organization will provide
24 voluntary market workers' compensation insurance and whether the client company will obtain separate
25 workers' compensation insurance. The Commission may require such other information as it deems
26 necessary for the administration of this section.

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

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

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

56 F. This section shall not exempt a client company from any other license requirements imposed

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

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

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

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

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

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

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

96 § 65.2-803.1. (Effective September 1, 2002) Requirements for registration as professional employer
 97 organization; annual assessment.

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

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

113 C. All agreements for professional employer services shall be in writing and shall provide a
 114 description of the respective rights and obligations of the professional employer organization and the
 115 client company. The professional employer organization shall provide a written summary of such rights
 116 and obligations to each coemployee, including information concerning filing for workers' compensation
 117 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 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~~ ^{seven} 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

179 class of insurance as an insurance agent, as defined in § 38.2-1800.

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