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HOUSE BILL NO. 1862

Offered January 12, 2005

Prefiled January 6, 2005

A BILL to amend and reenact § 65.2-803.1 of the Code of Virginia, relating to workers' compensation; professional employer organizations.

 Patron—Morgan

 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 is amended and reenacted as follows:**

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

A. Any ~~person~~ *business entity* (i) desiring to engage in the business of providing professional employer services or (ii) *having a controlling interest in, or sharing common ownership with, an organization providing such services* shall register with the Commission before it ~~undertakes to provide~~ *any such services may be provided. The Commission may require any business entity having a controlling ownership interest in or sharing common ownership with a professional employer organization providing professional employer services in the Commonwealth to guarantee, in a form prescribed by the Commission, performance of all obligations pursuant to this title, including the payment of workers' compensation benefits.*

B. Each registered professional employer organization shall notify the Commission and the Bureau of Insurance of the State Corporation Commission within ~~thirty~~ 30 calendar 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 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 seven calendar days after receipt of the notice. Failure of the professional employer organization to provide such notice to the client companies

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59 subrogates the Commission, upon payment of a claim from the Uninsured Employer's Fund to any
60 coemployee of a client company that did not receive notice, to any right to recover damages which the
61 injured coemployee or his personal representative may have against the professional employer
62 organization.

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

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

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

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

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

98 K. No person shall sell, solicit, or negotiate, as those terms are defined in § 38.2-1800, contracts of
99 insurance for or on behalf of a professional employer organization unless such person is licensed for that
100 class of insurance as an insurance agent, as defined in § 38.2-1800.

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