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SENATE BILL 6672

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State of Washington                      59th Legislature                      2006 Regular Session

By Senators Doumit, Delvin, Rasmussen and Parlette

Read first time 01/18/2006.                      Referred to Committee on Labor,  
Commerce, Research & Development.

1            AN ACT Relating to professional employer organizations; adding a  
2 new chapter to Title 18 RCW; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** The legislature finds that:

5            (1) Professional employer organizations provide a valuable service  
6 to commerce and the citizens of this state by increasing the  
7 opportunities of employers to develop cost-effective methods of  
8 satisfying their personnel requirements and providing employees with  
9 access to certain employment benefits which might otherwise not be  
10 available to them;

11            (2) Professional employer organizations operating in this state  
12 should be properly recognized; and

13            (3) Any allocation of the employer duties and responsibilities  
14 pursuant to this chapter shall preserve all rights to which covered  
15 employees would be entitled under a traditional employment  
16 relationship.

17            NEW SECTION.    **Sec. 2.** As used in this chapter:

1 (1) "Administrative fee" means the fee charged to a client by a  
2 professional employer organization for professional employer services.  
3 However, the administrative fee shall not be deemed to include any  
4 amount of a fee by the professional employer organization that is for  
5 wages and salaries, benefits, workers' compensation, payroll taxes,  
6 withholding, or other assessments paid by the professional employer  
7 organization to or on behalf of covered employees under the  
8 professional employer agreement.

9 (2) "Client" means any person who enters into a professional  
10 employer agreement with a professional employer organization.

11 (3) "Coemployer" means either a professional employer organization  
12 or a client.

13 (4) "Coemployment relationship" means a relationship which is  
14 intended to be an ongoing relationship rather than a temporary or  
15 project-specific one, wherein the rights, duties, and obligations of an  
16 employer which arise out of an employment relationship have been  
17 allocated between coemployers pursuant to a professional employer  
18 agreement and this chapter. In such a coemployment relationship:

19 (a) The professional employer organization is entitled to enforce  
20 only such employer rights and is subject to only those obligations  
21 specifically allocated to the professional employer organization by the  
22 professional employer agreement or this chapter;

23 (b) The client is entitled to enforce those rights and obligated to  
24 provide and perform those employer obligations allocated to such client  
25 by the professional employer agreement and this chapter; and

26 (c) The client is entitled to enforce any right and obligated to  
27 perform any obligation of an employer not specifically allocated to the  
28 professional employer organization by the professional employer  
29 agreement or this chapter.

30 (5) "Covered employee" means an individual having a coemployment  
31 relationship with a professional employer organization and a client who  
32 meets all of the following criteria: (a) The individual has received  
33 written notice of coemployment with the professional employer  
34 organization, and (b) the individual's coemployment relationship is  
35 pursuant to a professional employer agreement subject to this chapter.  
36 Individuals who are officers, directors, shareholders, partners, and  
37 managers of the client are covered employees to the extent the  
38 professional employer organization and the client have expressly agreed

1 in the professional employer agreement that such individuals would be  
2 covered employees and provided such individuals meet the criteria of  
3 this subsection and act as operational managers or perform day-to-day  
4 operational services for the client.

5 (6) "Person" means any individual, partnership, corporation,  
6 limited liability company, association, or any other form of legally  
7 recognized entity.

8 (7) "Professional employer agreement" means a written contract by  
9 and between a client and a professional employer organization that  
10 provides:

11 (a) For the coemployment of covered employees;

12 (b) For the allocation of employer rights and obligations between  
13 the client and the professional employer organization with respect to  
14 the covered employees; and

15 (c) That the professional employer organization and the client  
16 assume the responsibilities required by this chapter.

17 (8) "Professional employer organization" means any person engaged  
18 in the business of providing professional employer services. A person  
19 engaged in the business of providing professional employer services is  
20 subject to this chapter regardless of its use of the term or conducting  
21 business as a "professional employer organization," "PEO," "staff  
22 leasing company," "registered staff leasing company," "employee leasing  
23 company," "administrative employer," or any other name.

24 The following shall not be deemed to be professional employer  
25 organizations or the providing of professional employer services for  
26 purposes of this chapter:

27 (a) Arrangements wherein a person, whose principal business  
28 activity is not entering into professional employer arrangements and  
29 which does not hold itself out as a professional employer organization,  
30 shares employees with a commonly owned company within the meaning of  
31 section 414(b) and (c) of the Internal Revenue Code of 1986, as  
32 amended;

33 (b) Independent contractor arrangements by which a person assumes  
34 responsibility for the product produced or service performed by such  
35 person or his or her agents and retains and exercises primary direction  
36 and control over the work performed by the individuals whose services  
37 are supplied under such arrangements; or

38 (c) Providing temporary help services.

1 (9) "Professional employer services" means the service of entering  
2 into coemployment relationships under this chapter in which all or a  
3 majority of the employees providing services to a client or to a  
4 division or work unit of a client are covered employees.

5 (10) "Temporary help services" means services consisting of a  
6 person:

7 (a) Recruiting and hiring its own employees;

8 (b) Finding other organizations that need the services of those  
9 employees;

10 (c) Assigning those employees to perform work at or services for  
11 the other organizations to support or supplement the other  
12 organizations' work forces, or to provide assistance in special work  
13 situations such as, but not limited to, employee absences, skill  
14 shortages, seasonal workloads, or to perform special assignments or  
15 projects; and

16 (d) Customarily attempting to reassign the employees to other  
17 organizations when they finish each assignment.

18 NEW SECTION. **Sec. 3.** (1) Nothing contained in this chapter or in  
19 any professional employer agreement shall affect, modify, or amend any  
20 collective bargaining agreement, or the rights or obligations of any  
21 client, professional employer organization, or covered employee under  
22 the federal national labor relations act or the federal railway labor  
23 act.

24 (2) Nothing in this chapter or in any professional employer  
25 agreement shall:

26 (a) Diminish, abolish, or remove rights of covered employees to a  
27 client or obligations of such client to a covered employee existing  
28 prior to the effective date of the professional employer agreement;

29 (b) Affect, modify, or amend any contractual relationship or  
30 restrictive covenant between a covered employee and any client in  
31 effect at the time a professional employer agreement becomes effective.  
32 Nor shall it prohibit or amend any contractual relationship or  
33 restrictive covenant that is entered into subsequently between a client  
34 and a covered employee. A professional employer organization shall  
35 have no responsibility or liability in connection with, or arising out  
36 of, any such existing or new contractual relationship or restrictive

1 covenant unless the professional employer organization has specifically  
2 agreed otherwise in writing;

3 (c) Create any new or additional enforceable right of a covered  
4 employee against a professional employer organization that is not  
5 specifically provided by the professional employer agreement or this  
6 chapter.

7 (3) Nothing contained in this chapter or any professional employer  
8 agreement shall affect, modify, or amend any state, local, or federal  
9 licensing, registration, or certification requirement applicable to any  
10 client or covered employee.

11 (a) A covered employee who must be licensed, registered, or  
12 certified according to law or regulation is deemed solely an employee  
13 of the client for purposes of any such license, registration, or  
14 certification requirement.

15 (b) A professional employer organization shall not be deemed to  
16 engage in any occupation, trade, profession, or other activity that is  
17 subject to licensing, registration, or certification requirements, or  
18 is otherwise regulated by a governmental entity, solely by entering  
19 into and maintaining a coemployment relationship with a covered  
20 employee who is subject to such requirements or regulation.

21 (c) A client shall have the sole right of direction and control of  
22 the professional or licensed activities of covered employees and of the  
23 client's business. Such covered employees and clients shall remain  
24 subject to regulation by the regulatory or governmental entity  
25 responsible for licensing, registration, or certification of such  
26 covered employees or clients.

27 (4) For purposes of determination of tax credits and other economic  
28 incentives provided by this state or other government entity and based  
29 on employment, covered employees shall be deemed employees solely of  
30 the client. A client shall be entitled to the benefit of any tax  
31 credit, economic incentive, or other benefit arising as the result of  
32 the employment of covered employees of such client. If the grant or  
33 amount of any such incentives is based on number of employees, then  
34 each client shall be treated as employing only those covered employees  
35 coemployed by the client. Covered employees working for other clients  
36 of the professional employer organization shall not be counted. Each  
37 professional employer organization shall provide, upon request by a  
38 client or an agency or department of this state, employment information

1 reasonably required by any agency or department of this state  
2 responsible for administration of any such tax credit or economic  
3 incentive and necessary to support any request, claim, application, or  
4 other action by a client seeking any such tax credit or economic  
5 incentive.

6 (5) With respect to a bid, contract, purchase order, or agreement  
7 entered into with the state or a political subdivision of the state, a  
8 client company's status or certification as a small, minority-owned, or  
9 woman-owned business enterprise or as a historically underutilized  
10 business is not affected because the client company has entered into an  
11 agreement with a professional employer organization or uses the  
12 services of a professional employer organization.

13 NEW SECTION. **Sec. 4.** (1) Except as specifically provided in this  
14 chapter or in the professional employer agreement, in each coemployment  
15 relationship:

16 (a) The client shall be entitled to exercise all rights, and shall  
17 be obligated to perform all duties and responsibilities, otherwise  
18 applicable to an employer in an employment relationship;

19 (b) The professional employer organization shall be entitled to  
20 exercise only those rights, and obligated to perform only those duties  
21 and responsibilities, specifically required by this chapter or set  
22 forth in the professional employer agreement. The rights, duties, and  
23 obligations of the professional employer organization as coemployer  
24 with respect to any covered employee shall be limited to those arising  
25 pursuant to the professional employer agreement and this chapter during  
26 the term of coemployment by the professional employer organization of  
27 such covered employee; and

28 (c) Unless otherwise expressly agreed by the professional employer  
29 organization and the client in a professional employer agreement, the  
30 client retains the exclusive right to direct and control the covered  
31 employees as is necessary to conduct the client's business, to  
32 discharge any of the client's fiduciary responsibilities, or to comply  
33 with any licensure requirements applicable to the client or to the  
34 covered employees.

35 (2) Except as specifically provided in this chapter, the  
36 coemployment relationship between the client and the professional

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

4 (a) The allocation of rights, duties, and obligations as described  
5 in subsection (1) of this section;

6 (b) That the professional employer organization shall have  
7 responsibility to pay wages to covered employees; to withhold, collect,  
8 report, and remit payroll-related and unemployment taxes; and, to the  
9 extent the professional employer organization has assumed  
10 responsibility in the professional employer agreement, to make payments  
11 for employee benefits for covered employees. As used in this section,  
12 the term "wages" does not include any obligation between a client and  
13 a 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) That the professional employer organization shall have a right  
20 to hire, discipline, and terminate a covered employee, as may be  
21 necessary to fulfill the professional employer organization's  
22 responsibilities under this chapter and the professional employer  
23 agreement. The client shall have a right to hire, discipline, and  
24 terminate a covered employee.

25 (3) With respect to each professional employer agreement entered  
26 into by a professional employer organization, such professional  
27 employer organization shall provide written notice to each covered  
28 employee affected by such agreement of the general nature of the  
29 coemployment relationship between and among the professional employer  
30 organization, the client, and such covered employee.

31 (4) Except to the extent otherwise expressly provided by the  
32 applicable professional employer agreement:

33 (a) A client shall be solely responsible for the quality, adequacy,  
34 or safety of the goods or services produced or sold in the client's  
35 business.

36 (b) A client shall be solely responsible for directing,  
37 supervising, training, and controlling the work of the covered

1 employees with respect to the business activities of the client and  
2 solely responsible for the acts, errors, or omissions of the covered  
3 employees with regard to such activities.

4 (c) A client shall not be liable for the acts, errors, or omissions  
5 of a professional employer organization or of any covered employee of  
6 the client and a professional employer organization when such covered  
7 employee is acting under the express direction and control of the  
8 professional employer organization.

9 (d) A professional employer organization shall not be liable for  
10 the acts, errors, or omissions of a client or of any covered employee  
11 of the client when such covered employee is acting under the express  
12 direction and control of the client.

13 (e) Nothing in this subsection shall serve to limit any contractual  
14 liability or obligation specifically provided in the written  
15 professional employer agreement.

16 (f) A covered employee is not, solely as the result of being a  
17 covered employee of a professional employer organization, an employee  
18 of the professional employer organization for purposes of general  
19 liability insurance, fidelity bonds, surety bonds, employer's liability  
20 which is not covered by liability insurance carried by the professional  
21 employer organization unless the covered employees are included by  
22 specific reference in the professional employer agreement and  
23 applicable prearranged employment contract, insurance contract, or  
24 bond.

25 (5) A professional employer organization under this chapter is not  
26 engaged in the sale of insurance or in acting as a third-party  
27 administrator by offering, marketing, selling, administering, or  
28 providing professional employer services which include services and  
29 employee benefit plans for covered employees.

30 (6)(a) Covered employees whose services are subject to sales tax  
31 shall be deemed the employees of the client for purposes of collecting  
32 and levying sales tax on the services performed by the covered  
33 employee. Nothing contained in this chapter shall relieve a client of  
34 any sales tax liability with respect to its goods or services.

35 (b) Any tax upon professional employer services or any business  
36 license or other fee, including but not limited to chapter 82.04 RCW,  
37 which is based upon gross receipts shall be limited to the  
38 administrative fee of the professional employer organization.



1 (c) Any tax assessed on a per capita or per employee basis shall be  
2 assessed against the client for covered employees and against the  
3 professional employer organization for its employees who are not  
4 covered employees coemployed with a client.

5 (d) In the case of tax imposed or calculated upon the basis of  
6 total payroll, the professional employer organization shall be eligible  
7 to apply any small business allowance or exemption available to the  
8 client for the covered employees for the purpose of computing the tax.

9 NEW SECTION. **Sec. 5.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2006.

14 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute  
15 a new chapter in Title 18 RCW.

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