

LABOR CODE

TITLE 2. PROTECTION OF LABORERS

SUBTITLE E. REGULATION OF CERTAIN OCCUPATIONS

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a license or the renewal of a license under this chapter.

(2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 117, Sec. 28(1), eff. September 1, 2013.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations;

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

(3) "Client" means any person who enters into a professional employer services agreement with a license holder.

(3-a) "Coemployer" means a professional employer organization or a client that is a party to a coemployment relationship.

(3-b) "Coemployment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

(4) "Commission" means the Texas Commission of Licensing and Regulation.

(5) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 14.010(1).

(6) "Common ownership" means a direct or indirect

ownership interest in excess of 33-1/3 percent. The term includes ownership through subsidiaries or affiliates.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity that offers or proposes to offer professional employer services;

(B) possesses the authority to set policy and direct management of a business entity that offers or proposes to offer professional employer services;

(C) is employed, appointed, or authorized by a business entity that offers or proposes to offer professional employer services to enter into a professional employer services agreement with a client on behalf of the business entity; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

(8) "Department" means the Texas Department of Licensing and Regulation.

(8-a) "Executive director" means the executive director of the department.

(9) "Governmental entity" means this state, or an agency, county, or municipality of this state.

(10) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(11) "License holder" means a person licensed under this chapter to provide professional employer services.

(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 188, Sec. 6, eff. September 1, 2009.

(13) "Offer" means a proposal for acceptance or rejection that is made in such a form that the promises or performance to be rendered by each party are reasonably certain.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. The term does not include:

(A) temporary help;

(B) an independent contractor;

(C) the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) a temporary common worker employer as defined by Chapter 92.

(15) "Professional employer organization" means a business entity that offers professional employer services.

(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(17) "Wages" means:

(A) compensation for labor or services rendered by a covered employee, whether computed on a time, task, piece, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered employee under a written agreement.

(18) "Working capital" of an applicant means the

applicant's current assets minus the applicant's current liabilities as determined by generally accepted accounting principles.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.001, 14.010(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 833, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. [2249](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. [2249](#)), Sec. 6, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 28(1), eff. September 1, 2013.

Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A coemployment relationship is intended to be an ongoing relationship rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between coemployers under a professional employer services agreement. Coemployment is not a joint employment arrangement.

(b) In a coemployment relationship:

(1) the professional employer organization may enforce only those employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer services agreement or this chapter;

(2) the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this chapter; and

(3) the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional

employer services agreement or this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 3, eff. September 1, 2013.

Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee must meet all the following criteria:

(1) the individual must receive written notice of the coemployment relationship with the professional employer organization; and

(2) the individual's coemployment relationship must be under a professional employer services agreement subject to this chapter.

(b) An individual who is an executive employee, as described by Section 406.097, of the client is a covered employee, except to the extent the professional employer organization and the client expressly agree in the professional employer services agreement that the individual is not a covered employee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 3, eff. September 1, 2013.

Sec. 91.0013. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be in a coemployment relationship with:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 4, eff. September 1, 2015.

Sec. 91.002. RULES. (a) The commission shall adopt rules as necessary to administer this chapter.

(b) Each person who offers professional employer services is subject to this chapter and the rules adopted by the commission.

(c) Notwithstanding any other provision of this chapter, nothing in this chapter preempts the existing statutory or rulemaking authority of any other state agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that state agency or entity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.002, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 4, eff. September 1, 2013.

Sec. 91.003. INTERAGENCY COOPERATION. (a) Each state agency that in performing duties under other law affects the regulation of professional employer services shall cooperate with the department and other state agencies as necessary to implement and enforce this chapter.

(b) In particular, the Texas Workforce Commission, the division of workers' compensation of the Texas Department of Insurance, the Department of Assistive and Rehabilitative Services, and the attorney general's office shall assist in the implementation of this chapter and shall provide information to the department on request.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.016, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. [7](#)), Sec. 3.001, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 5, eff. September 1, 2013.

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES.

(a) This chapter does not exempt a client of a license holder, or any covered employee, from any other license requirements imposed under local, state, or federal law.

(b) A covered employee who is licensed, registered, or certified under law is considered to be an employee of the client for the purpose of that license, registration, or certification.

(c) A license holder is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services agreement with a client and covered employees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 6, eff. September 1, 2013.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client has entered into a professional employer services agreement with a license holder or uses the services of a license holder.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 6, eff. September 1, 2013.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage or other evidence of coverage showing that either a license holder or a client maintains workers' compensation insurance coverage constitutes proof of workers'

compensation insurance coverage for the license holder and the client with respect to all covered employees of the license holder and the client. The state and a political subdivision of the state shall accept a certificate of insurance coverage or other evidence of coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For a client that has employees who are not covered employees under a professional employer services agreement, the state or a political subdivision of the state may require the client to furnish separate proof of workers' compensation insurance coverage for those employees.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This chapter does not relieve a client of a right, obligation, or duty under:

- (1) Chapter 101;
- (2) the federal National Labor Relations Act (29 U.S.C. Section 151 et seq.);
- (3) the federal Railway Labor Act (45 U.S.C. Section 151 et seq.); or
- (4) any other law governing labor relations.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW. Section 51.405, Occupations Code, does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 14.003, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 91.011. LICENSE REQUIRED. A person may not engage in or offer professional employer services in this state unless the person holds a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified to serve as a controlling person of a license holder under this chapter, that person must be at least 18 years of age and have educational, managerial, or business experience relevant to:

(1) operation of a business entity offering professional employer services; or

(2) service as a controlling person of a professional employer organization.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.013. BACKGROUND INVESTIGATIONS. (a) On receipt of an original application for a license, the department shall conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance of a license if the department finds that an applicant or a controlling person is not qualified under this chapter. The investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department of police or other

law enforcement records maintained by local, state, or federal law enforcement agencies.

(b) Department background investigations are governed by this chapter, Section 411.122, Government Code, and Chapter 53, Occupations Code. Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license. The department shall consider criminal convictions as provided by Section 411.122, Government Code, and Chapter 53, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 6, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.815, eff. Sept. 1, 2001.

Sec. 91.014. WORKING CAPITAL REQUIREMENTS. (a) An applicant for an original or renewal license must demonstrate positive working capital in the following amounts:

(1) \$50,000 if the applicant employs fewer than 250 covered employees;

(2) \$75,000 if the applicant employs at least 250 but not more than 750 covered employees; and

(3) \$100,000 if the applicant employs more than 750 covered employees.

(b) The applicant shall demonstrate the applicant's working capital to the department by providing the department with the applicant's financial statement. The financial statement must be prepared in accordance with generally accepted accounting principles, be audited by an independent certified public accountant, and be without qualification as to the going concern status of the applicant. An applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations must meet the financial capacity requirements required by Subsection (a) and provide the department with financial statements that have been reviewed by a certified public accountant. The applicant may satisfy any deficiencies in the working capital requirement through guarantees, letters of credit,

a bond in an amount that demonstrates compliance with the amounts required under Subsection (a), or other security acceptable to the department. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty.

(c) Information submitted to or maintained by the department is subject to Chapter 552, Government Code, other than information related to:

- (1) identification of clients;
- (2) working capital;
- (3) financial statements; or
- (4) federal tax returns.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 2, eff. December 31, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 7, eff. September 1, 2013.

Sec. 91.015. LICENSE APPLICATION. (a) To receive a professional employer organization original license, a person shall file with the department a written application accompanied by the application fee.

(b) The department shall require an applicant for a license to provide information necessary to determine that the applicant meets the licensing requirements of this chapter. The department shall also require the applicant to provide information necessary to determine whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. The department shall provide the applicant at least 30 days after the date of the notice to address the reasons for the denial. For good cause and on a showing of a good faith effort to

remedy the reasons for the denial, the executive director may grant an additional 30 days to remedy the reasons for denial.

(d) Removal, demotion, or discharge of a controlling person in response to notice from the department of the alleged unsuitability of that controlling person is an affirmative defense to any claim by that individual based on the removal, demotion, or discharge.

(e) A controlling person who has been evaluated by the department under this chapter is not required to be reevaluated if that person changes the person's affiliation or employment from one applicant or license holder to another applicant or license holder.

(f) Following denial or revocation of a license, and prior to issuing a new license or reinstating a license, the department shall consider:

(1) the extent to which the applicant or license holder has adequately corrected any problems; and

(2) whether the applicant or license holder has demonstrated that the applicant or license holder had exercised due diligence to avoid the reason or reasons for the denial or revocation.

The applicant or license holder shall bear the burden of proof with respect to Subdivisions (1) and (2).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.017, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 8, eff. September 1, 2013.

Sec. 91.016. LICENSE ISSUANCE; TERM. (a) The department shall issue a license to an applicant who the department determines has met the requirements of this chapter. The department shall notify an applicant of any deficiency in the application not later than the 30th day after the date on which the department receives the application forms. The department shall issue the license not later than the 90th day after the date on which the completed

application is filed with the department.

(b) A license issued or renewed by the department under this chapter is valid for one year from the date of the issuance or renewal. The department shall renew a license on receipt of a complete renewal application form and payment of the license renewal fee.

(c) Each applicant or license holder shall disclose to the department the addition of a new controlling person not later than the 45th day after the date on which the person assumes the duties of a controlling person. That person may serve as a controlling person while the department is conducting any necessary investigation. If the department determines not to approve the new controlling person, the department shall notify the applicant or license holder and that controlling person at least 20 days before taking action against the applicant or license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.004, eff. Sept. 1, 2003.

Sec. 91.017. FEES. (a) Each applicant for an original or renewal professional employer organization license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule.

(b) The commission is authorized to charge reasonable fees for license applications and renewals, investigations, inspections, and any other administrative or enforcement responsibilities created under this chapter.

(c) Fees collected by the department under this chapter may be used only to implement this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 10, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.005, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 9, eff. September 1, 2013.

Sec. 91.018. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR LOCATION. (a) A license holder may not conduct business under any name other than that specified in the license. A license issued under this chapter is not assignable. A license holder may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another license holder that the public may be confused or misled by the name's use. A license holder may not conduct business under more than one name unless the license holder has obtained a separate license for each name.

(b) A license holder may change the license holder's licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change. A license holder may change the license holder's name on renewal of the license without the payment of the name change fee.

(c) A license holder must notify the department in writing of:

(1) any change in the location of the license holder's primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records maintained by the license holder.

(d) A license holder may amend the name specified in its license to add a trade name, trademark, service mark, or parent company name. An amendment made under this subsection must comply with the requirements imposed under Subsection (a). The department may charge a fee for processing of such an amendment.

(e) A license holder offering professional employer services in more than one state may advertise in this state using the name of its parent company or under a trade name, trademark, or service mark. The trade name, trademark, service mark, or parent company name must be listed on the license in addition to the licensed name used by the license holder in this state.

(f) Each written proposal provided to a prospective client

and each contract between a license holder and a client or covered employee shall clearly identify the name of the license holder. A proposal or contract may also identify the trade name, trademark, service mark, or parent company name of the license holder. A license holder may use written materials including forms, benefit information, letterhead, and business cards that bear only the trade name, trademark, service mark, or parent company name of the license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 11, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.006, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 10, eff. September 1, 2013.

Sec. 91.019. LIMITED LICENSE. (a) The commission by rule shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this state.

(b) For purposes of this section, a professional employer organization is considered to be offering limited professional employer services if the professional employer organization:

(1) employs fewer than 50 covered employees in this state at any one time;

(2) does not provide covered employees to a client based or domiciled in this state; and

(3) does not maintain an office in this state or solicit clients located or domiciled in this state.

(c) A professional employer organization that offers limited professional employer services shall complete the application forms and pay the fees for a limited license as prescribed by the department. A limited license is valid for one year from the date of issuance and may be renewed annually on submission of a renewal application and payment of the required fees.

(d) The department may use information obtained from

regulatory agencies in other states in evaluating an applicant for a limited license.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.007, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 11, eff. September 1, 2013.

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The department may take disciplinary action against a license holder on any of the following grounds:

(1) engaging in professional employer services or offering to engage in the provision of professional employer services without a license;

(2) transferring or attempting to transfer a license issued under this chapter;

(3) violating this chapter or any order or rule issued by the executive director or commission under this chapter;

(4) failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;

(5) failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the Texas Department of Insurance;

(6) failing after the 31st day after the effective date of a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;

(7) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director;

(8) refusing, after reasonable notice, to meet

reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency;

(9) being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;

(10) being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(11) knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) failing to maintain the working capital required under Section [91.014](#); or

(13) using professional employer services to avert or avoid an existing collective bargaining agreement.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.008, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. [2249](#)), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 12, eff. September 1, 2013.

Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) The commission may adopt rules to permit the acceptance of electronic filings under this chapter, including the filing of applications, documents, reports, and other documents required by this chapter. The rules may provide for the acceptance of electronic filing and other assurance by an assurance organization, qualified and approved by the commission, that provides satisfactory assurance and documentation of compliance acceptable to the department that meets or exceeds the requirements of this chapter.

(b) A professional employer organization may authorize an assurance organization that is qualified and approved by the

commission to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Use of an assurance organization is optional and is not mandatory for a professional employer organization.

(c) Nothing in this section may be construed to change or affect the department's authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. [2249](#)), Sec. 4, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 13, eff. September 1, 2013.

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES AGREEMENT

Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder shall establish the terms of a professional employer services agreement by a written contract between the license holder and the client.

(b) The license holder shall give written notice of the agreement as it affects covered employees to each covered employee.

(c) The written notice required by Subsection (b) must be given to each covered employee not later than the first payday after the date on which that individual becomes a covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 15, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 14, eff. September 1, 2013.

Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional employer services agreement between a license holder and a client must provide that the license holder:

(1) shares, as provided by Subsection (b), with the

client the right of direction and control over covered employees;

(2) assumes responsibility for the payment of wages to the covered employees without regard to payments by the client to the license holder;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on covered employees;

(4) shares, as provided by Subsection (b), with the client the right to hire, fire, discipline, and reassign the covered employees; and

(5) shares, as provided by Subsection (b), with the client the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.

(b) Notwithstanding any other provision of this chapter, a client retains sole responsibility for:

(1) the direction and control of covered employees as necessary to conduct the client's business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement;

(2) goods and services produced by the client; and

(3) the acts, errors, and omissions of covered employees committed within the scope of the client's business.

(c) Notwithstanding Subsection (a)(2), a client is solely obligated to pay any wages for which:

(1) obligation to pay is created by an agreement, contract, plan, or policy between the client and the covered employee; and

(2) the professional employer organization has not contracted to pay.

(d) Each professional employer organization shall disclose the requirements of Subsection (c) in writing to each covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 771, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 833, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 14, eff.

September 1, 2013.

SUBCHAPTER D. POWERS AND DUTIES OF LICENSE HOLDER

Sec. 91.041. EMPLOYEE BENEFIT PLANS; REQUIRED DISCLOSURE; OTHER REPORTS. (a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees.

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state or a self-funded health benefit plan sponsored by a license holder as provided by Section 91.0411 shall be treated for purposes of state law as a single employer welfare benefit plan.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client, and its covered employees:

- (1) the type of coverage;
- (2) the identity of each insurer for each type of coverage;
- (3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;
- (4) the policy limits on each insurance policy; and
- (5) whether the coverage is fully insured, partially insured, or fully self-funded.

(c) The commission by rule may require a license holder to file other reports that are reasonably necessary for the implementation of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.009, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 15, eff. September 1, 2013.

Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT PLAN. (a) In this section, "commissioner" means the commissioner of insurance.

(b) A license holder may sponsor a benefit plan that is not fully insured if the license holder meets the requirements of this section and is approved to sponsor the plan by the commissioner.

(c) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement the regulation of benefit plans sponsored by a license holder that are not fully insured. The commissioner may not adopt a rule that requires clients or covered employees to be members of an association or group in the same trade or industry in order to be covered by a license holder-sponsored benefit plan that is not fully insured. The rules must include all requirements that must be met by the license holder and the plan, including:

- (1) initial and final approval requirements;
- (2) authority to prescribe forms and items to be submitted to the commissioner by the license holder;
- (3) a fidelity bond;
- (4) use of an independent actuary;
- (5) use of a third-party administrator;
- (6) authority for the commissioner to examine an application or a plan;
- (7) the minimum number of clients and covered employees covered by the plan;
- (8) standards for those natural persons managing the plan;
- (9) the minimum amount of gross contributions;
- (10) the minimum amount of written commitment, binder, or policy for stop-loss insurance;
- (11) the minimum amount of reserves; and
- (12) a fee in an amount reasonable and necessary to defray the costs of administering this section to be deposited to

the credit of the operating fund of the Texas Department of Insurance.

(d) Information submitted under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) Each license holder under this section shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is \$50, payable at the time of appointment.

(f) The commissioner may examine the affairs of any plan and shall have access to the records of the plan. The commissioner may examine under oath a manager or employee of the license holder in connection with the plan.

(g) In addition to any requirement or remedy under a law, the commissioner may suspend, revoke, or limit the authorization of a plan if the commissioner determines, after notice and hearing, that the plan does not comply with this section. The commissioner may notify the attorney general of a violation of this section, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(h) A plan under this section is subject to Chapters 401, 404, 441, and 443, Insurance Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 16, eff. September 1, 2013.

Sec. 91.042. WORKERS' COMPENSATION INSURANCE; ADMINISTRATIVE VIOLATION. (a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain coverage. If the license holder

maintains workers' compensation insurance coverage for the client, an individual who is an executive employee, as described by Section 406.097, of the client is eligible to be treated as an executive employee for premium calculation and classification purposes. A copy of the professional employer services agreement must be provided to the Texas Department of Insurance on request. Information obtained by the Texas Department of Insurance under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(a-2) If the client elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy or other coverage, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation insurance coverage for covered employees, the license holder shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client for the first two years the covered employees are covered under the professional employer organization's policy and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance coverage for covered employees, the client and the license holder are subject to Sections 406.005, 406.034, 408.001, and 411.032.

(c-1) Notwithstanding Subsection (c), for purposes of Section 462.308(a)(2), Insurance Code, the client is considered to be the insured employer.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance coverage for covered employees, both the license holder and the client are subject to Sections 406.004, 406.005, 406.033, and 411.032.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain workers' compensation insurance coverage for covered employees through

coverage maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain, through coverage maintained by the client or through coverage maintained by a successor professional employer organization, workers' compensation insurance coverage for employees previously covered by the former professional employer organization's policy, the premium for the workers' compensation insurance coverage for the client shall be based on the lower of:

(1) the experience modifier of the client before being covered under the professional employer organization's coverage; or

(2) the experience modifier of the license holder at the time the client's coverage under the professional employer organization's coverage is terminated.

(f) On request, an insurer shall provide the necessary computations to the prospective workers' compensation insurer of the client to comply with Subsection (e).

(g) On the written request of a client, a license holder that elects to provide workers' compensation insurance for covered employees shall provide to the client a list of:

(1) claims associated with that client made against the license holder's workers' compensation policy; and

(2) payments made and reserves established on each claim.

(h) The license holder shall provide the information described by Subsection (g) in writing from the license holder's own records, if the license holder is a qualified self-insurer, or from information the license holder received from the license holder's workers' compensation insurance provider following the license holder's request under Section [2051.151](#), Insurance Code, not later than the 60th day after the date the license holder receives the client's written request. For purposes of this subsection, information is considered to be provided to the client on the date the information is:

(1) received by the United States Postal Service; or

(2) personally delivered to the client.

(i) A license holder that fails to comply with Subsection

(g) or (h) commits a Class D administrative violation as provided by Section [415.011](#).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. [625](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. [625](#)), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 17, eff. September 1, 2013.

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license holder is the employer of a covered employee for purposes of Subtitle A, Title 4, and, except for wages subject to Section [91.032\(c\)](#), for purposes of Chapter [61](#).

(a-1) A license holder may, in a calendar year during which an employee becomes a covered employee of the license holder, apply toward the maximum amount of taxable wages established in Section [201.082\(1\)](#) any wages paid to the employee in that calendar year by:

(1) the client; or

(2) another license holder under a prior professional employer services agreement with that client.

(a-2) In addition to any other reports required to be filed by law, a license holder shall report quarterly to the Texas Workforce Commission on a form prescribed by the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code according to the North American Industry Classification System of each client.

(b) For purposes of Subtitle A, Title 4, in the event of the termination of a contract between a license holder and a client or the failure by a professional employer organization to submit reports or make tax payments as required by that subtitle, the contracting client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1,

1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 17, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 833, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 18, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1260 (H.B. [3150](#)), Sec. 1, eff. September 1, 2015.

Sec. 91.045. POSTING REQUIREMENTS. (a) Each license holder shall post in a conspicuous place in the license holder's principal place of business in this state the license issued under this chapter.

(b) Each license holder shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is responsible for the license holder's contractual duties and responsibilities to manage, maintain, collect, and make timely payments for:

- (1) insurance premiums;
- (2) benefit and welfare plans;
- (3) other employee withholding; and
- (4) any other expressed responsibility within the scope of the professional employer services agreement for fulfilling the duties imposed under this section and Sections [91.032](#), [91.047](#), and [91.048](#).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 18, eff. September 1, 2013.

Sec. 91.047. COMPLIANCE WITH OTHER LAWS. Each license holder shall comply with all appropriate state and federal laws relating to reporting, sponsoring, filing, and maintaining benefit and welfare plans.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the executive director the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client;

(B) each professional employer services agreement with a client; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget, of each client;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.018, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 18, eff.

September 1, 2013.

Sec. 91.049. AGENT FOR SERVICE OF PROCESS. Each license holder shall maintain a registered agent for the service of process in this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the purpose of determining tax credits, grants, and other economic incentives provided by this state or other governmental entities that are based on employment, covered employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of covered employees of the client. This subsection applies even if the professional employer organization is the reporting employer for federal income tax purposes.

(b) If a grant or the amount of any incentive described by Subsection (a) is based on the number of employees, each client shall be treated as employing only those employees coemployed by the client. Covered employees working for other clients of the professional employer organization may not be included in the computation.

(c) Each professional employer organization shall provide, on the request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. [2249](#)), Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 18, eff. September 1, 2013.

SUBCHAPTER E. PROHIBITED ACTS; ENFORCEMENT

Sec. 91.061. PROHIBITED ACTS. A person may not:

(1) engage in or offer professional employer services without holding a license under this chapter as a professional employer organization;

(2) use the name, title, or designation "professional employer organization," "PEO," "staff leasing company," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," or "administrative employer" or otherwise represent that the entity is licensed under this chapter unless the entity holds a license issued under this chapter;

(3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;

(4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or

(5) use or attempt to use a license that has expired or been revoked.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 19, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. [1286](#)), Sec. 18, eff. September 1, 2013.

Sec. 91.062. ACTION BY ATTORNEY GENERAL. (a) The executive director may notify the attorney general of a violation of this chapter. The attorney general may apply to a district court in Travis County for permission to file for quo warranto relief, injunctive relief, or both.

(b) The attorney general may not be required to post a bond for injunctive relief under this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1,

1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.019, eff.
Sept. 1, 2003.