

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2077**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Senate Sub. for HB 2077 would create the Professional Employer Organization (PEO) Act. A person or business that entered into an ongoing co-employment relationship with an employer-client would be defined as being a PEO. Prior to providing professional employee-related services for client businesses, a PEO would be required to register with the Insurance Commissioner by providing the following applicant information:

- Names by which the PEO conducts business;
- Principal address and the address of any field office in the state;
- Taxpayer or employer identification number;
- A list, by jurisdiction, of each name under which the PEO has operated in the preceding five years;
- A statement of ownership from owners with 15 percent or more equity in the business;
- A statement of management, including the names and business experience of senior executive officers; and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- A financial statement, which would include the latest annual audit and evidence of:
 - Positive working capital; or
 - If there is insufficient working capital, the submission of a bond, an irrevocable letter of credit, or securities with a minimum market value which would be equal to positive working capital plus \$100,000. Such a bond would be held by a depository designated by the Commissioner.

The Commissioner would be required to accept, to the extent practical, the electronic submission of applications and other information. The Commissioner could accept electronic filings on the behalf of a PEO by an independent entity that would be approved by the Commissioner.

PEOs already doing business in the state must register within 60 days after the bill's enactment date. PEOs would be required to renew their annual registration within 60 days after the end of their fiscal year. If a PEO discovered a client had covered employees in Kansas, the PEO either could decline to provide services or notify the Commissioner within five business days after the discovery and file for a limited registration or a full registration if there were more than 50 covered employees. An annual, limited registration could be applicable to a PEO that is:

- Located outside Kansas and registered as a PEO in another state;
- Does not have a presence in Kansas or directly solicits clients in the state; and
- Does not have more than 50 covered employees in any one day.

Professional employer groups, comprised of two or more PEOs owned or controlled by the same person, could register on the behalf of its members, provided each PEO would be able to guarantee its financial capacity obligations.

The Kansas Insurance Department would maintain a public list of registered PEOs which must be readily available to the public by electronic or other means. The Commissioner would be required to adopt rules and regulations establishing fee rates. An initial application fee would not exceed \$1,000. Fees for renewal or limited registration, either for initial or renewal applications, would not exceed \$500. Moneys collected from fees and penalties would be deposited in a new Professional Employer Organization Fee Fund. The fund would be under the control of the Commissioner for administration of the bill.

Under the bill, an employer could not knowingly enter into a co-employment relationship that either covered less than a majority of the employer's in-state employees or in which less than half of the employer's Kansas payroll is attributable to covered employees. A PEO would be required to provide written notice of the professional employer arrangement to each covered employee. Neither the bill nor any professional employer agreement would affect:

- Collective bargaining agreements;
- The rights of covered employees;
- The contractual relationship between a covered employee and any client;
- The creation of new enforceable rights for a covered employee against a PEO;
- Any licensing, registration or certification requirement of the employer-client or the covered employee; and

- An employer-client's designation as woman, minority owned, or small business enterprise.

The PEO and the employer-client would be responsible for sponsoring retirement and employee welfare benefit plans. A professional employer agreement could require the PEO to make payments for covered employees' benefits. A professional employer agreement between a PEO and its employer-client would include:

- The allocation of rights, duties, and obligations;
- The PEO's responsibility to pay the wages of covered employees, along with payroll-related withholding and unemployment taxes;
- The PEO's right to hire, discipline, or terminate a covered employee.

Unless a professional employer agreement specified differently, the relationship between an employer and a PEO could:

- Allocate rights, duties, and obligations between the employer-client and the PEO;
- Assign to the PEO the responsibility to pay wages for covered employees, withholding and remitting funds for taxes, and benefits;
- Assign to the PEO the right to exercise employment decisions over covered personnel;
- Assign to the employer-client the responsibility for the employees' production of goods and services. The employer-client would not be liable for an employee when that person is acting under the direction and control of the PEO;

- Classify a covered employee to not be an employee of the PEO for liability or workers compensation purposes;
- Prohibit a PEO from selling insurance on the behalf of an employer-client, but it would sponsor health and workers' compensation plans for its covered employees from an insurance carrier admitted to do business in Kansas (if such policies are canceled or non-renewed, the PEO must notify affected clients within 7 days);
- With regard to any gross receipts tax imposed upon a PEO, exclude gross income derived from professional employer services performed for an employer-client; and
- Assign to the employer-client the responsibility for collecting sales tax and paying any tax imposed on a per-employee basis.

If it is determined, after a civil hearing by the Commissioner, that a person or PEO violated the bill or promulgated rules and regulations, the result could be:

- Denial of application for registration;
- Revoke, restrict, or refuse to renew a registration;
- A civil fine not to exceed \$10,000 per violation;
- Probation; or
- A Cease and Desist Order issued by the Commissioner.

The Commissioner would be authorized and required to adopt rules and regulations to implement and enforce the provisions of this bill.

The bill would take effect on January 1, 2014 and its publication in the statute book.

Background

The Senate Committee on Financial Institutions and Insurance recommended a substitute bill to incorporate provisions relating to the registration and oversight of Professional Employer Organizations (PEOs). The inserted language is similar to the provisions contained in 2012 SB 413, as amended by the Senate Committee on Commerce, with some exceptions. Those exceptions include the regulator for the registration and oversight (this substitute bill authorizes the Insurance Commissioner to provide oversight; SB 413 assigned the regulatory authority to the Secretary of Labor), the prescribed time frame for filings associated with registration and renewals (reduced from 180 days to 60 days), deletion of a confidentiality provision, clarification of coverage and notification requirements associated with PEO-sponsored health and workers' compensation plans, and insertion of authorization for the promulgation of rules and regulations by the Commissioner. The Senate Committee action to create the substitute bill deletes the contents of the bill, as had been further amended by the Senate Committee. Those contents included provisions that would create and amend the Insurance Holding Company Act (HB 2508) and provisions pertaining to the combination sale of life insurance coverage with certain health care riders (HB 2373, as amended by the House Committee on Insurance).

HB 2077 was introduced during the 2011 Session at the request of the Kansas Insurance Department whose representative indicated that the Department has received, on average, requests from at least 50 percent of the group-funded workers compensation pools over the past several years requesting to file the statements after the filing due date. The proposed due date to file audited financial statements is the same as that required of insurance companies (this amended time frame also is being proposed

in 2011 HB 2076 for municipal group-funded pools). There were no opponents to the bill at the time of the House Committee hearing.

The Senate Committee on Financial Institutions and Insurance 2011 amendments to the bill deleted the contents of the original bill and inserted the provisions of 2011 SB 14, as amended by the House Committee on Health and Human Services. (The House Committee amendment deleted a provision that would have allowed the Insurance Commissioner to approve any increases in the maximum lifetime coverage limits recommended by the Board (Kansas Health Insurance Association)). The contents of the original bill were included in the Conference Committee Report for HB 2076.

The Senate Committee on Financial Institutions and Insurance further amended the bill during the 2012 Session. The amendments deleted the contents of HB 2077, as amended by the Senate Committee and inserted provisions that would create and amend the Insurance Holding Company Act (HB 2508) and provisions pertaining to the combination sale of life insurance coverage with certain health care riders (HB 2373, as amended by the House Committee on Insurance). The Senate Committee adopted amendments that would enact the Insurance Holding Company Act and amend statutes regulating holding companies. The Senate Committee inserted amendments to HB 2508, as introduced, to delete certain references to affiliates and decrease a penalty amount. The amendments were submitted by the Kansas Insurance Department.

The fiscal note prepared by the Division of the Budget on the original bill would no longer apply.