

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1361

Introduced by

Representatives Grande, Kasper, Ruby

Senators Klein, J. Lee, Triplett

1 A BILL for an Act to create and enact subsection 11 to section 43-55-01 and two new sections
2 to chapter 43-55 of the North Dakota Century Code, relating to professional employer
3 organizations; to amend and reenact sections 43-55-03 and 43-55-05 of the North Dakota
4 Century Code, relating to licensing requirements for professional employer organizations; and
5 to declare an emergency.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Subsection 11 to section 43-55-01 of the North Dakota Century Code is
8 created and enacted as follows:

9 11. "Working capital" means current assets less current liabilities as defined by
10 generally accepted accounting principles.

11 **SECTION 2. AMENDMENT.** Section 43-55-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-55-03. Licensing requirements.**

- 14 1. ~~After October 1, 2007, a~~ A person may not provide, advertise, or otherwise hold
15 itself out as providing professional employer services, unless the person is
16 licensed under this chapter. A person engaged in the business of providing
17 professional employer services shall obtain a license regardless of its use of the
18 term or conducting business as a "professional employer organization", "staff
19 leasing company", "registered staff leasing company", "employee leasing
20 company", "administrative employer", or any other name.
- 21 2. Each applicant for licensure shall provide the secretary of state with the following
22 information:

- a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
- b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.
- c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
- d. The professional employer organization's taxpayer or employer identification number.
- e. The date of the end of the applicant's fiscal year.
- f. A list ~~by jurisdiction of each name under~~ of jurisdictions in which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.
- g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
- h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
- i. ~~A~~ An audited financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, ~~as of a date not earlier than one hundred eighty days~~ for the fiscal year ended immediately before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. ~~The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period~~

~~and must clearly define the working capital of the professional employer organization.~~ A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement bond as provided under ~~this subdivision for the entire period of its operation~~ section 43-55-05.

j. A copy of the employer's quarterly federal tax return for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not operated long enough to have filed an employer's quarterly federal tax return shall submit a bond in the amount as provided under section 43-55-05.

3. A license issued under this section is valid for one year.

4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of state the information required in subsection 2 along with the required license fee.

b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:

(1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; ~~or~~ and

(2) A bond with a minimum value of ~~one~~ five percent of the wages, tips, and other compensation reported on the employer's quarterly federal tax return for the quarter ending immediately before the date submitted

1 to the secretary of state but not to exceed five hundred thousand
2 dollars to be held by the secretary of state to secure payment by the
3 professional employer organization of any tax, wage, benefit, or other
4 entitlement due to or with respect to a covered employee if the
5 professional employer organization does not make the payment when
6 due.

7 c. The secretary of state shall suspend the license of a professional employer
8 organization if the professional employer organization fails to submit the
9 audited and verified financial statement by the extended date provided under
10 subdivision b.

11 5. A person applying for licensure or a renewal of licensure shall maintain
12 continuously its organization's applicable records current and in good standing as
13 otherwise required by law.

14 6. The secretary of state shall maintain a list of professional employer organizations
15 licensed under this chapter.

16 **SECTION 3. AMENDMENT.** Section 43-55-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **43-55-05. Financial capability and bond.**

19 1. A professional employer organization shall maintain ~~either~~:

20 ~~4-~~ a. A minimum working capital of one hundred thousand dollars as reflected in
21 the financial statement submitted to the secretary of state with the license
22 application and each annual renewal; ~~or~~ and
23 ~~2-~~ b. A bond with a minimum value of ~~one~~ five percent of the wages, tips, and
24 other compensation reported on the employer's quarterly federal tax return for
25 the quarter ending immediately before the date submitted to the secretary of
26 state but not to exceed five hundred thousand dollars ~~as reflected in the~~
27 ~~financial statement submitted to the secretary of state.~~

28 2. A professional employer organization that does not have a minimum working
29 capital of one hundred thousand dollars shall submit a bond in the amount of one
30 hundred thousand dollars or five percent of the wages, tips, and other
31 compensation reported on the employer's quarterly federal tax return for the

1 quarter ending immediately before the date submitted to the secretary of state,
2 whichever is greater but not to exceed five hundred thousand dollars.

3 3. A professional employer organization that has not operated long enough to have
4 completed a full fiscal year or filed an employer's quarterly federal tax return shall
5 submit a bond in the amount of one hundred thousand dollars.

6 4. The bond must be held by the secretary of state and secure payment by the
7 professional employer organization of any tax, wage, benefit, or other entitlement
8 due to or with respect to a covered employee if the professional employer
9 organization does not make the payment when due. A bond provided under this
10 section may not be included for the purpose of calculation of the minimum net
11 worth required by this section.

12 5. Notice of cancellation or nonrenewal of the surety bond required by this section
13 shall be provided to the secretary of state at least forty-five days before
14 cancellation or nonrenewal.

15 **SECTION 4.** Two new sections to chapter 43-55 of the North Dakota Century Code are
16 created and enacted as follows:

17 **Confidential records.**

18 1. The social security number or federal tax identification number disclosed or
19 contained in an application filed with the secretary of state under this chapter is
20 confidential. The secretary of state shall delete or obscure any social security
21 number or federal tax identification number before a copy of an application is
22 released to the public.

23 2. All audited financial reports and employers' quarterly federal tax returns are
24 confidential except to the extent necessary for the proper administration of this
25 chapter by the secretary of state or the attorney general.

26 **Interagency cooperation.** A state agency, in performing duties under other laws that
27 affect the regulation of professional employer organizations, shall cooperate with the secretary
28 of state as necessary to administer and enforce this chapter.

29 **SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.