

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Grande

1 A BILL for an Act to amend and reenact sections 43-55-03 and 43-55-05 of the North Dakota  
2 Century Code, relating to licensing requirements for professional employer organizations; and  
3 to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Section 43-55-03 of the North Dakota Century Code is  
6 amended and reenacted as follows:

#### 7 **43-55-03. Licensing requirements.**

- 8 1. ~~After October 1, 2007, a~~ A person may not provide, advertise, or otherwise hold  
9 itself out as providing professional employer services, unless the person is licensed  
10 under this chapter. A person engaged in the business of providing professional  
11 employer services shall obtain a license regardless of its use of the term or  
12 conducting business as a "professional employer organization", "staff leasing  
13 company", "registered staff leasing company", "employee leasing company",  
14 "administrative employer", or any other name.
- 15 2. Each applicant for licensure shall provide the secretary of state with the following  
16 information:
- 17 a. The name of the professional employer organization and any name under  
18 which the professional employer organization intends to conduct business in  
19 this state.
- 20 b. The designation of organization of the applicant whether domestic or foreign;  
21 a corporation, limited liability company, general partnership, limited  
22 partnership, limited liability partnership, limited liability limited partnership, sole  
23 proprietor, or any other person subject to a governing statute; and the  
24 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 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 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 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 as provided under this subdivision for the entire period of its operation.~~
3. A license issued under this section is valid for one year.

- 1           4.    ~~a.    Within sixty days before the expiration of a license, the licensee may apply to~~  
2                    renew the license by submitting to the secretary of state the information  
3                    required in subsection 2 along with the required license fee.
- 4                   ~~b.    For the purposes of a renewal application, the audited and verified financial~~  
5                    ~~statement may be based on the twelve months of operating history before the~~  
6                    ~~close of the fiscal year immediately preceding the renewal date of the license.~~  
7                    ~~A professional employer organization that is unable to obtain an audited and~~  
8                    ~~verified financial statement before the expiration of a license may submit with~~  
9                    ~~the application for renewal:~~
- 10                  ~~(1)   A written request for an extension to submit the audited and verified~~  
11                    ~~financial statement by a specific date within six months after the license~~  
12                    ~~is renewed and a verified statement, signed by an individual authorized~~  
13                    ~~by the professional employer organization, affirming that the~~  
14                    ~~professional employer organization has continuously maintained~~  
15                    ~~sufficient working capital to meet the financial capacity requirements~~  
16                    ~~under this chapter; or~~
- 17                  ~~(2)   A bond with a minimum value of one hundred thousand dollars to be~~  
18                    ~~held by the secretary of state to secure payment by the professional~~  
19                    ~~employer organization of any tax, wage, benefit, or other entitlement~~  
20                    ~~due to or with respect to a covered employee if the professional~~  
21                    ~~employer organization does not make the payment when due.~~
- 22                  ~~e.    The secretary of state shall suspend the license of a professional employer~~  
23                    ~~organization if the professional employer organization fails to submit the~~  
24                    ~~audited and verified financial statement by the extended date provided under~~  
25                    ~~subdivision b.~~
- 26           5.    A person applying for licensure or a renewal of licensure shall maintain  
27                    continuously its organization's applicable records current and in good standing as  
28                    otherwise required by law.
- 29           6.    The secretary of state shall maintain a list of professional employer organizations  
30                    licensed under this chapter.

1           **SECTION 2. AMENDMENT.** Section 43-55-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **43-55-05. Financial capability - Bond.** A professional employer organization shall  
4 continuously maintain either:

5           1. ~~A minimum working capital of one hundred thousand dollars as reflected in the~~  
6           ~~financial statement submitted to the secretary of state with the license application~~  
7           ~~and each annual renewal; or~~

8           2. ~~A a bond with a minimum value of one hundred thousand dollars as reflected in the~~  
9           ~~financial statement submitted to the secretary of state. The bond must be~~  
10           submitted with a license application or a renewal application and be held by the  
11           secretary of state and secure payment by the professional employer organization  
12           of any tax, wage, benefit, or other entitlement due to or with respect to a covered  
13           employee if the professional employer organization does not make the payment  
14           when due. ~~A bond provided under this section may not be included for the~~  
15           ~~purpose of calculation of the minimum net worth required by this section.~~

16           **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.