

HOUSE BILL NO. 1361

Introduced by

Representatives Grande, Kasper, Ruby

Senators Klein, J. Lee, Triplett

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.

- 1 c. The address of the principal place of business of the professional employer
2 organization and the address of each office it maintains in this state.
- 3 d. The professional employer organization's taxpayer or employer identification
4 number.
- 5 e. The date of the end of the applicant's fiscal year.
- 6 f. A list by jurisdiction of each name under which the professional employer
7 organization has operated in the preceding five years, including any
8 alternative names, names of predecessors, and, if known, successor business
9 entities.
- 10 g. A statement of ownership, which must include the name and address of any
11 person that owns or controls twenty-five percent or more of the equity
12 interests of the professional employer organization.
- 13 h. A statement of management, which must include the name and address of
14 any individual who serves as president, chief executive officer, or otherwise
15 has the authority to act as a senior executive officer of the professional
16 employer organization.
- 17 ~~i. A financial statement, verified by a certified public accountant licensed to
18 practice in the jurisdiction in which the accountant is located, as of a date not
19 earlier than one hundred eighty days before the date submitted to the
20 secretary of state, which is prepared in accordance with generally accepted
21 accounting principles. The financial statement must set forth the financial
22 condition of the professional employer organization over the most recent
23 twelve-month operating period and must clearly define the working capital of
24 the professional employer organization. A professional employer organization
25 that has not had sufficient operating history to have a financial statement
26 based upon at least twelve months of operating history shall meet the
27 financial capacity requirements under this chapter and present a financial
28 statement as provided under this subdivision for the entire period of its
29 operation.~~
- 30 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.