

FIRST ENGROSSMENT
with Senate Amendments

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 9 to section 43-55-08 and two new sections to
2 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 9 to section 43-55-08 of the North Dakota Century Code is
8 created and enacted as follows:

9 9. Upon request of the secretary of state or attorney general, a professional employer
10 organization promptly shall provide an audited financial statement verified by a
11 certified public accountant licensed to practice in the jurisdiction in which the
12 accountant is located.

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

15 **43-55-03. Licensing requirements.**

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

23 2. Each applicant for licensure shall provide the secretary of state with the following
24 information:

- 1 a. The name of the professional employer organization and any name under
2 which the professional employer organization intends to conduct business in
3 this state.
- 4 b. The designation of organization of the applicant whether domestic or foreign;
5 a corporation, limited liability company, general partnership, limited
6 partnership, limited liability partnership, limited liability limited partnership,
7 sole proprietor, or any other person subject to a governing statute; and the
8 jurisdiction of origin of the organization.
- 9 c. The address of the principal place of business of the professional employer
10 organization and the address of each office it maintains in this state.
- 11 d. The professional employer organization's taxpayer or employer identification
12 number.
- 13 e. The date of the end of the applicant's fiscal year.
- 14 f. A list ~~by jurisdiction of each name under~~ of jurisdictions in which the
15 professional employer organization has operated in the preceding five years,
16 including any alternative names, names of predecessors, and, if known,
17 successor business entities.
- 18 g. A statement of ownership, which must include the name and address of any
19 person that owns or controls twenty-five percent or more of the equity
20 interests of the professional employer organization.
- 21 h. A statement of management, which must include the name and address of
22 any individual who serves as president, chief executive officer, or otherwise
23 has the authority to act as a senior executive officer of the professional
24 employer organization.
- 25 i. ~~A financial statement, verified by a certified public accountant licensed to~~
26 ~~practice in the jurisdiction in which the accountant is located, as of a date not~~
27 ~~earlier than one hundred eighty days before the date submitted to the~~
28 ~~secretary of state, which is prepared in accordance with generally accepted~~
29 ~~accounting principles. The financial statement must set forth the financial~~
30 ~~condition of the professional employer organization over the most recent~~
31 ~~twelve month operating period and must clearly define the working capital of~~

- 1 ~~the professional employer organization. A professional employer organization~~
2 ~~that has not had sufficient operating history to have a financial statement~~
3 ~~based upon at least twelve months of operating history shall meet the~~
4 ~~financial capacity requirements under this chapter and present a financial~~
5 ~~statement bond as provided under this subdivision for the entire period of its~~
6 ~~operation section 43-55-05.~~
- 7 j. A copy of the employer's quarterly contribution and wage report to job service
8 North Dakota for the quarter ending immediately before the date submitted to
9 the secretary of state. A professional employer organization that has not filed
10 an employer's quarterly contribution and wage report with job service North
11 Dakota shall submit a bond in the amount as provided under section
12 43-55-05.
- 13 3. A license issued under this section is valid for one year and may be renewed
14 within sixty days before the expiration of the license by submitting to the secretary
15 of state:
- 16 a. The information required in subsection 2;
17 b. The license fee provided in section 43-55-04; and
18 c. A bond as provided under section 43-55-05.
- 19 4. a. ~~Within sixty days before the expiration of a license, the licensee may apply to~~
20 ~~renew the license by submitting to the secretary of state the information~~
21 ~~required in subsection 2 along with the required license fee.~~
- 22 b. ~~For the purposes of a renewal application, the audited and verified financial~~
23 ~~statement may be based on the twelve months of operating history before the~~
24 ~~close of the fiscal year immediately preceding the renewal date of the license.~~
25 ~~A professional employer organization that is unable to obtain an audited and~~
26 ~~verified financial statement before the expiration of a license may submit with~~
27 ~~the application for renewal:~~
- 28 (1) ~~A written request for an extension to submit the audited and verified~~
29 ~~financial statement by a specific date within six months after the license~~
30 ~~is renewed and a verified statement, signed by an individual authorized~~
31 ~~by the professional employer organization, affirming that the~~

1 professional employer organization has continuously maintained
2 sufficient working capital to meet the financial capacity requirements
3 under this chapter; or

4 (2) A bond with a minimum value of one hundred thousand dollars to be
5 held by the secretary of state to secure payment by the professional
6 employer organization of any tax, wage, benefit, or other entitlement
7 due to or with respect to a covered employee if the professional
8 employer organization does not make the payment when due.

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

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

16 6. 5. The secretary of state shall maintain a list of professional employer organizations
17 licensed under this chapter.

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

20 **43-55-05. Financial capability Bond.**

21 1. A professional employer organization shall maintain either:

22 4. A minimum working capital of one hundred thousand dollars as reflected in the
23 financial statement submitted to the secretary of state with the license application
24 and each annual renewal; or

25 2. A a bond with a minimum value of the greater amount of one hundred thousand
26 dollars or five percent of the total wages reported on the employer's quarterly
27 contribution and wage report to job service North Dakota for the quarter ending
28 immediately before the date submitted to the secretary of state but not to exceed
29 five hundred thousand dollars as reflected in the financial statement submitted to
30 the secretary of state.

1 2. A professional employer organization that has not filed an employer's quarterly
2 contribution and wage report with job service North Dakota shall submit a bond in
3 the amount of one hundred thousand dollars.

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

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

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

15 **Confidential records.**

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

21 2. All audited financial reports and the employers' quarterly contribution and wage
22 report to job service North Dakota are confidential except to the extent necessary
23 for the proper administration of this chapter by the secretary of state or the
24 attorney general.

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

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