

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1361
(Representatives Grande, Kasper, Ruby)
(Senators Klein, J. Lee, Triplett)

AN ACT to create and enact subsection 9 to section 43-55-08 and two new sections to chapter 43-55 of the North Dakota Century Code, relating to professional employer organizations; to amend and reenact sections 43-55-03 and 43-55-05 of the North Dakota Century Code, relating to licensing requirements for professional employer organizations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 9 to section 43-55-08 of the North Dakota Century Code is created and enacted as follows:

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

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

43-55-03. Licensing requirements.

1. ~~After October 1, 2007, a~~ A person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following 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 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 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 contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota 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 and may be renewed within sixty days before the expiration of the license by submitting to the secretary of state:
- a. The information required in subsection 2;
 - b. The license fee provided in section 43-55-04; and
 - c. A bond as provided under section 43-55-05.
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~~
 - ~~(2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with~~

~~respect to a covered employee if the professional employer organization does not make the payment when due.~~

- e. ~~The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b.~~
- 5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
- 6. 5. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

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

43-55-05. Financial capability Bond.

- 1. A professional employer organization shall maintain ~~either:~~
- 1. ~~A minimum working capital of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state with the license application and each annual renewal; or~~
- 2. A a bond with a minimum value of the greater amount of one hundred thousand dollars or five percent of the total wages reported on the employer's quarterly contribution and wage report to job service North Dakota for the quarter ending immediately before the date submitted to the secretary of state but not to exceed five hundred thousand dollars as reflected in the financial statement submitted to the secretary of state.
- 2. A professional employer organization that has not filed an employer's quarterly contribution and wage report with job service North Dakota shall submit a bond in the amount of one hundred thousand dollars.
- 3. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due. ~~A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.~~
- 4. Notice of cancellation or nonrenewal of the surety bond required by this section shall be provided to the secretary of state at least forty-five days before cancellation or nonrenewal.

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

Confidential records.

- 1. The social security number or federal tax identification number disclosed or contained in an application filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of an application is released to the public.
- 2. All audited financial reports and the employers' quarterly contribution and wage report to job service North Dakota are confidential except to the extent necessary for the proper administration of this chapter by the secretary of state or the attorney general.

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1361 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 89 Nays 0 Absent 5

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State