

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LICENSING LAWS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; DEFINING "FINANCIAL STATEMENTS"; REQUIRING A \$100,000 SECURITY DEPOSIT IN CERTAIN CASES; PROVIDING THAT A SECURITY BOND, A LETTER OF CREDIT, OR MARKETABLE SECURITIES DEPOSITED WITH THE DEPARTMENT TO MEET NET WORTH REQUIREMENTS MAY BE USED TO PAY CERTAIN LIABILITIES; AMENDING SECTIONS 39-8-102, 39-8-202, 39-8-204, 39-8-206, AND 39-8-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person that obtains all or part of ~~its~~ the person's workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract, or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization or group hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Financial statements" means accounting information, consisting of balance sheets and income statements, that identifies the financial position of applicants or licensees through their operations and cash flow.

~~(6)(7)~~ "Licensee" means a person licensed as a professional employer organization or group under this chapter.

~~(7)(8)~~ "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

~~(8)(9)~~ (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

- (i) a professional employer organization or group assigns employees to perform services for a client;
- (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
- (iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

- (i) services performed by a temporary service contractor;
- (ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group;

(iii) arrangements existing for employment of an independent contractor, as defined in 39-71-120; and

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(9)(10)~~ "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

~~(10)(11)~~ (a) "Professional employer organization" means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or pursuant to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own

employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

~~(11)~~(12) "Temporary service contractor" means a person conducting a business that hires ~~its~~ the person's own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Section 2. Section 39-8-202, MCA, is amended to read:

"39-8-202. Initial license application -- application fee -- standards -- provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) \$750 for a resident or nonresident unrestricted license; and

(b) \$500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group shall meet the following standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that ~~no a~~ a written partnership agreement ~~exists~~ does not exist.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation ~~and provide a certificate of good standing from the secretary of state demonstrating that the corporation is qualified to do business in this state.~~ A domestic or foreign

1 corporation must have filed any required documents with the secretary of state and must remain in good
2 standing in order to conduct business pursuant to this chapter.

3 (d) A limited liability company shall state the names and home addresses of those individuals who own
4 a 5% or greater interest in the limited liability company ~~and provide a certificate of good standing from the~~
5 ~~secretary of state demonstrating that the company is qualified to do business in this state.~~ A domestic or foreign
6 limited liability company must have filed any required documents with the secretary of state and must remain
7 in good standing in order to conduct business pursuant to this chapter.

8 (e) A group:

9 (i) must be authorized to act on behalf of the group;

10 (ii) shall include for each professional employer organization within the group the information required
11 in this subsection (4); and

12 (iii) shall guarantee, on a form provided by the department and executed by each professional employer
13 organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes,
14 insurance premiums, and employee benefits of each other member within the group.

15 (5) An applicant shall also provide:

16 (a) the trade name or names under which the applicant conducts business, the business's taxpayer or
17 employer identification number, the address of the business's principal place of business in the state, and the
18 addresses of any other offices within the state through which the applicant intends to conduct business as a
19 professional employer organization or group. If the applicant's principal place of business is located in another
20 state, the address must be provided.

21 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years,
22 including any alternative names, names of predecessors, and names of related business entities with common
23 majority ownership, and detailed information on the background of each controlling person to the extent required
24 by the department; and

25 (c) other information requested by the department to show that the applicant and each controlling
26 person are of good moral character, have business integrity, and are financially responsible. "Good moral
27 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings;
28 and respect for the rights of others and for the laws of this state and nation.

29 (6) (a) Except for an applicant who is granted a restricted license under subsection (8), an applicant shall
30 maintain a tangible accounting net worth of not less than \$50,000, evidenced by:

1 ~~(i) providing a independently audited financial statement~~ statements prepared by a certified public
2 accountant in accordance with generally accepted accounting principles ~~and accompanied by a compilation~~
3 ~~report by an independent certified public accountant; or~~

4 (ii) providing independently compiled financial statements and a \$100,000 security deposit in a form that
5 is acceptable to the department.

6 (b) If, after licensure, an applicant defaults in paying wages or payroll taxes or in meeting any liability
7 arising pursuant to Title 39, chapters 71 and 72, or this chapter, the security deposit may be used to meet those
8 obligations. The security deposit may not be used in determining the net worth of an applicant.

9 (c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6
10 months prior to the date on which the application is submitted.

11 (ii) A financial statement Financial statements submitted must be attested by the president, chief
12 financial officer, and at least one controlling person of the professional employer organization or group.

13 ~~(iii) In meeting the specified~~ If an applicant is unable to meet the \$50,000 net worth requirement, the
14 applicant may shall provide to the department a surety bond, a letter of credit, or marketable securities
15 acceptable to the department in an amount sufficient to cover the deficiency. If, after licensure, an applicant
16 defaults in paying wages or payroll taxes or in meeting any liability arising pursuant to Title 39, chapters 71 and
17 72, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be
18 used to meet those obligations. A surety will not be acceptable to satisfy this requirement unless the applicant
19 submits sufficient evidence to satisfy the department that the surety has adequate resources to satisfy the
20 obligations of the surety. A surety is subject to audit or verification by the department or its agent.

21 (7) The applicant shall maintain a positive working capital, as ~~determined in accordance with generally~~
22 accepted accounting principles evidenced by financial statements.

23 (8) The department may issue a restricted license for limited operation within this state to a professional
24 employer organization or group that is a resident of or domiciled in another state if:

25 (a) the applicant's state of residence or domicile provides for licensing of professional employer
26 organizations or groups, the applicant is licensed and in good standing in ~~the that~~ that state of residence or domicile,
27 and that state grants a similar privilege for restricted licensing to professional employer organizations or groups
28 that are residents of or domiciled in this state and that are licensed under this chapter;

29 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state and
30 does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(9) An applicant for a ~~nonresident or~~ restricted license shall ~~file, on a form provided by the department,~~
~~an appointment of~~ appoint a recognized and approved entity as its ~~attorney~~ registered agent to receive service
of legal process issued against it in this state.

(10) The department may issue a provisional license to an applicant that allows the applicant to operate
in this state while the applicant's application is being processed by the department. The department may not
charge a fee for a provisional license. The department may adopt rules to implement the provisions of this
subsection.

~~(10)(11)~~ A license issued under 39-8-204 or this section ~~remains the property of the department and may~~
not be transferred."

Section 3. Section 39-8-204, MCA, is amended to read:

"39-8-204. License renewal. (1) ~~Except as provided in subsection (5), a~~ A license issued under this
chapter is valid for 1 year from the date of issuance unless suspended or revoked.

(2) An applicant for license renewal is subject to the requirements of 39-8-202(3) through (11).

~~(2)(3)~~ At least 30 days prior to the expiration of the license, the licensee shall submit an application for
renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided
in 39-8-205.

~~(3)(4)~~ A late renewal application may not be processed prior to the expiration of the licensee's current
license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.

~~(4)(5)~~ Denial of a renewal license is subject to review under the provisions of 39-8-203.

~~(5) If the application fee required in 39-8-202 is paid and accepted, then no additional license fee is
required for the first year."~~

Section 4. Section 39-8-206, MCA, is amended to read:

"39-8-206. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided
in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew
a license issued under this chapter if, after notice to the licensee ~~of the charges and after a hearing,~~ the
department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the

1 department at the time of issuance;

2 (b) a violation of an order of the department or noncompliance with any provision of this chapter;

3 (c) procurement of or attempting to procure a license through misrepresentation or fraud;

4 (d) failure to provide a written response to a written inquiry from the department or its agent within 30
5 days after receiving an inquiry; or

6 (e) failure to meet or maintain any other requirement of this chapter.

7 (2) If a license is suspended, revoked, or not renewed, the department shall:

8 (a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier;

9 and

10 (b) require the licensee to:

11 (i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or
12 nonrenewal using language furnished by the department;

13 (ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of
14 the client's entering into a contract with the licensee, for any wages, workers' compensation premiums,
15 payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

16 (iii) provide the department with evidence of client notification.

17 (3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure
18 provided in 39-8-203."

19
20 **Section 5.** Section 39-8-302, MCA, is amended to read:

21 **"39-8-302. Disciplinary action against licensee -- penalties.** (1) The department may deny a license
22 application or may suspend, revoke, or refuse to renew an existing license for a person who:

23 (a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

24 (b) engages in fraud, deceit, misrepresentation, or misconduct in:

25 (i) obtaining or providing workers' compensation or health coverage;

26 (ii) the classification of employees;

27 (iii) the reporting of employee wages for purposes of ~~unemployment insurance or any payroll-related~~
28 taxes or workers' compensation benefits; or

29 (iv) the operation of a professional employer organization or group;

30 (c) conducts business without a valid license;

1 (d) fails to maintain evidence of workers' compensation insurance coverage;

2 (e) transfers or attempts to transfer a license issued pursuant to this chapter; or

3 (f) violates the provisions of this chapter or a rule issued pursuant to this chapter.

4 (2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon
5 conviction, is subject to a fine of up to \$1,000, imprisonment for not more than 1 year, or both."

6
7 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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