ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE
BILL NO. 2446 By: Quinn of the House

and

Brinkley of the Senate

An Act relating to labor; amending 40 O.S. 2011, Section 600.4, which relates to renewal of registration by professional employer organizations; providing for late-registration renewal fee; authorizing Insurance Commissioner to take certain actions on certain registrations; requiring certain findings by Commissioner; providing civil penalties for certain violations; authorizing Commissioner to issue certain orders or file for injunctive relief; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Page 13, lines 1 through 16, delete all language and renumber subsequent section.

AMENDMENT NO. 2. and amend the title to conform by deleting after the semi-colon on line 10 through the semi-colon on line 11, all language.

Passed the Senate the 17th day of April, 2012.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2012.

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Presiding Officer of the House
of Representatives

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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 2011, Section 600.4, is amended to read as follows:

Section 600.4 A. Registration required. Except as otherwise provided in the Oklahoma Professional Employer Organization Recognition and Registration Act, no person shall, unless the person is registered as a PEO or PEO Group under the Oklahoma Professional Employer Organization Recognition and Registration Act, provide, advertise, or otherwise hold itself out as providing professional employer services in this state.

B. Registration information.

1. Each PEO or PEO Group required to be registered under the Oklahoma Professional Employer Organization Recognition and Registration Act shall provide the Insurance Commissioner with information required by the Commissioner on forms prescribed by the Commissioner. Pursuant to paragraph 2 of this subsection, a PEO or PEO Group may use a qualified assurance organization as approved by the Commissioner to provide services related to the registration of the PEO or PEO Group. A PEO or PEO Group may authorize an assurance organization to act on behalf of the PEO or PEO Group in complying with the registration requirements set forth in the Oklahoma Professional Employer Organization Recognition and Registration Act, including, but not limited to, electronic filings of information and payment of registration fees. At a minimum, PEOs, PEO Groups or an approved assurance organization acting on behalf of the PEO or PEO Group, shall provide the following information:

a. the name or names under which the PEO or PEO Group conducts business,

b. the address of the principal place of business of the PEO or PEO Group and the address of each office it maintains in this state,

c. the PEO's or PEO Group's taxpayer or employer identification number,

d. a list by jurisdiction of each name under which the PEO or PEO Group has operated in the preceding five (5) years, including any alternative names, names of predecessors and, if known, successor business entities,

e. a statement of ownership, which shall include the name and evidence of the business experience of any person that, individually or acting in concert with one or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the PEO or PEO Group,

f. a statement of management, which shall include the name and evidence of the business experience of any person who serves as president, chief executive officer, or otherwise has the authority to act as senior executive officer of the PEO or PEO Group, and

g. a financial statement setting forth the financial condition of the PEO or PEO Group, as of a date not earlier than one hundred eighty (180) days prior to the date submitted to the Commissioner, prepared in accordance with generally accepted accounting principles, and audited or reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located.

A PEO Group may submit combined or consolidated audited or reviewed financial statements to meet the requirements of this section.

2. The financial statement required by subparagraph g of paragraph 1 of this subsection may be dated as of a date that is not earlier than three hundred sixty-five (365) days before the date on which the application is submitted in the event the PEO or PEO Group provides the following:

a. evidence that is acceptable to the Commissioner that it is licensed or registered in good standing in another state with equal or greater requirements than the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act,

b. quarterly financial statements of management for each calendar quarter as of the most recent audit that demonstrate continuing financial operations acceptable to the Commissioner, and

c. the certification of an independent Certified Public Accountant that as of the end of the most recent calendar quarter, the PEO or PEO Group has paid all of its state and federal payroll taxes, health and workers' compensation premiums, and contributions to employee retirement plans in a timely and appropriate manner.

3. For purposes of the Oklahoma Professional Employer Organization Recognition and Registration Act, "assurance organization" means an independent entity approved by the Commissioner to certify the qualifications of a PEO or PEO Group for registration under this section and Section 600.6 of this title and any related requirements and procedures. To be considered for approval as an independent and qualified assurance organization, the assurance organization shall submit a written request for approval to the Commissioner. The written request shall include, but not be limited to, the following:

a. evidence that the assurance organization is independent and has an established national program for the accreditation and financial assurance of PEOs and PEO Groups based on requirements similar to the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act, and any rules promulgated for the implementation of the Oklahoma Professional Employer Organization Recognition and Registration Act,

b. evidence that the assurance organization has documented qualifications, standards, procedures, and financial assurance acceptable to the Commissioner and is licensed or otherwise approved by one or more

states to certify the qualifications of PEOs or PEO Groups,

c. an agreement to provide information, compliance monitoring services, and a level of financial assurance as deemed acceptable by the Commissioner,

d. an agreement to provide the Commissioner with an application that has been executed by each PEO or PEO Group requesting alternative registration under this section and Section 600.6 of this title and related requirements and procedures in a form approved by the Commissioner. The application shall:

(1) authorize the assurance organization to share with the Commissioner any application and compliance reporting information required under the Oklahoma Professional Employer Organization Recognition and Registration Act that has been provided to the assurance organization by the PEO or PEO Group,

(2) authorize the Commissioner to accept information shared by the assurance organization for registration or renewal of registration of the PEO or PEO Group as if the information was provided directly to the Commissioner by the PEO or PEO Group,

(3) provide the certification of the PEO or PEO Group that the information provided by the assurance organization to the Commissioner is true and complete and that the PEO or PEO Group is in full and complete compliance with all requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act, and

(4) provide the certification of the assurance organization that the PEO or PEO Group is in compliance with the standards and procedures of the assurance organization which are similar to the requirements of the Oklahoma Professional Employer Organization Recognition and Registration Act and is qualified for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act,

e. an agreement to provide written notice to the Commissioner within two (2) business days of determination by the assurance organization of the failure of a PEO or PEO Group to meet the qualifications for registration under the Oklahoma Professional Employer Organization Recognition and Registration Act or determination by the assurance

organization of the failure of the PEO or PEO Group to meet the qualifications for accreditation or certification by the assurance organization, and

f. an agreement to share with the Commissioner in a timely manner the information and supporting documentation provided to the assurance organization by the PEO or PEO Group similar to the information and documentation required for registration or renewal of registration under the Oklahoma Professional Employer Organization Recognition and Registration Act.

C. Initial registration.

1. Each PEO or PEO Group operating within this state as of November 1, 2002, shall complete its initial registration not later than one hundred eighty (180) days after the end of the PEO's or PEO Group's first fiscal year ending after November 1, 2002.

2. Each PEO or PEO Group not operating within this state as of November 1, 2002, shall complete its initial registration prior to commencement of operations within this state. A registration is valid for a term of one (1) year.

D. Renewal. 1. A registration expires one (1) year following the registration unless it is renewed pursuant to this subsection. Before expiration of the registration, a registrant may renew the registration for an additional one-year term if the registrant:

~~1. Remains~~

a. remains in good standing and otherwise is entitled to be registered pursuant to the Oklahoma Professional Employer Organization Recognition and Registration Act~~;~~,

~~2. Files~~

b. files with the Commissioner a renewal application on a form prescribed by the Commissioner~~;~~, and

~~3. Pays~~

c. pays to the Commissioner a renewal fee as provided for in Section 600.5 of this title.

2. A registration shall be considered late thirty (30) days after the renewal date. Any registration received more than thirty (30) days after the renewal date shall be accompanied by a late registration fee of Five Hundred Dollars ($500.00).

E. Group registration. Any two or more PEOs held under common control of any other person or persons acting in concert may be registered as a PEO Group. A PEO Group may satisfy any reporting and financial requirements of this registration law on a consolidated basis.

F. Electronic filing and compliance. A PEO, PEO Group or an approved independent and qualified assurance organization as provided for in subsection B of this section may electronically submit filings in conformance with Sections 15-101 through 15-121 of Title 12A of the Oklahoma Statutes. Electronically submitted

filings include, but are not limited to, applications, documents, reports, and other filings required under the Oklahoma Uniform Electronic Transactions Act.

G. De minimis exemption.

1. A PEO is exempt from the registration requirements payable under the Oklahoma Professional Employer Organization Recognition and Registration Act if such PEO:

a. submits a properly executed request for exemption on a form provided by the Department,

b. is domiciled outside this state and is licensed or registered as a professional employer organization in another state that has the same or greater requirements as the Oklahoma Professional Employer Organization Recognition and Registration Act,

c. does not maintain an office in this state or solicit in any manner clients located or domiciled within this state, and

d. does not have more than twenty-five covered employees employed or domiciled in this state~~; and~~.

2. An exemption of a professional employer organization from the registration requirements under the Oklahoma Professional Employer Organization Recognition and Registration Act shall be valid for one (1) year, subject to renewal.

H. List. The Commissioner shall maintain a list of professional employer organizations registered or exempted under the Oklahoma Professional Employer Organization Recognition and Registration Act and a list of approved assurance organizations.

I. Forms. The Commissioner may prescribe forms necessary to promote the efficient administration of this section.

J. The Commissioner is authorized to promulgate reasonable rules necessary for the administration and implementation of this section.

K. ~~Nothing in this section shall limit or change the authority of the Commissioner to register or terminate registration of a PEO or PEO Group or to investigate or enforce any~~ The Commissioner may reject an application for registration, renewal of registration, or for an exemption from registration if the Commissioner finds that:

1. The application is not fully completed or properly executed;

2. Documents required to supplement the application are not included in the application packet or are inadequate;

3. The registration fee is not submitted with the application;

4. The applicant or any person named in the application misrepresents material in the application;

5. The applicant, or any of its officers, is determined by the Commissioner to lack good moral character, business integrity, or financial responsibility; or

6. The controlling person has violated a provision of the Oklahoma Professional Employer Organization Recognition and Registration Act.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.9 of Title 40, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner may, after notice and opportunity for hearing, refuse to register any person, suspend or revoke the registration of any professional employer organization, or impose administrative fines as provided for in the Oklahoma Professional Employer Organization Recognition and Registration Act if the Commissioner finds:

1. That the registrant or applicant has violated any of the provisions of this section, rules lawfully promulgated by the Commissioner, or the conditions of financial assurances required by this act;

2. That the registrant or applicant has engaged in a fraudulent, deceptive, or dishonest practice; or

3. For good and sufficient cause, that the registrant or applicant is unfit to be a professional employer organization within the meaning of this act or of any of the rules lawfully promulgated by the Commissioner.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 600.10 of Title 40, unless there is created a duplication in numbering, reads as follows:

A. Any person who violates any of the provisions of the Oklahoma Professional Employer Organization Recognition and Registration Act or who violates any rules promulgated by the Insurance Commissioner shall be liable for a civil penalty for each offense of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

B. If the Commissioner has reason to believe or it appears that any person or entity has violated or is threatening to violate this act, or any rule promulgated pursuant to this act, the Commissioner may issue an ex parte cease and desist order, or may institute in the District Court of Oklahoma County a civil suit for injunctive relief to restrain the person from continuing the violation or threat of violation.

SECTION 4. This act shall become effective November 1, 2012.

Passed the House of Representatives the 6th day of March, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate