

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 196, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Rader

Rader-NP-FS-Req#1916
3/1/2021 3:56 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 196

By: Rader

FLOOR SUBSTITUTE

An Act relating to the Oklahoma Professional Employer Organization Recognition and Registration Act; amending 40 O.S. 2011, Sections 600.2, 600.4, as amended by Section 1, Chapter 238, O.S.L. 2012 and 600.6 (40 O.S. Supp. 2020, Section 600.4), which relate to registration and tax requirements; adding definition; authorizing an attorney to certify certain financial statements and payment of payroll taxes; and providing an effective date.

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 600.2, is amended to read as follows:

Section 600.2. 1. "Client" means any person who enters into a coemployment relationship as a coemployer with a professional employer organization (PEO);

2. "Coemployer" means either a PEO or a client;

3. "Coemployment relationship" means:

a. as between coemployers, a relationship whereby the rights, duties and obligations of an employer which

1 arise out of an employment relationship have been
2 allocated between coemployers pursuant to a
3 professional employer agreement and the Oklahoma
4 Professional Employer Organization Recognition and
5 Registration Act, and which is intended to be an
6 ongoing relationship, rather than a temporary or
7 ~~project-specific~~ project-specific relationship, and

8 b. as between each PEO and a covered employee as to which
9 a professional employer agreement applies, an
10 employment relationship whereby:

11 (1) such PEO is entitled to enforce those rights, and
12 obligated to perform those duties and
13 obligations, allocated to such PEO by the
14 professional employer agreement and the Oklahoma
15 Professional Employer Organization Recognition
16 and Registration Act, and

17 (2) such covered employee is entitled to enforce
18 against such PEO those duties and obligations
19 allocated to the PEO by the professional employer
20 agreement and the Oklahoma Professional Employer
21 Organization Recognition and Registration Act;

22 c. as between each client and a covered employee to which
23 a professional employer agreement applies and
24 employment relationship whereby:

1 (1) such client is entitled to enforce those rights,
2 and obligated to provide and perform those
3 employer obligations allocated to such client by
4 the professional employer agreement and the
5 Oklahoma Professional Employer Organization
6 Recognition and Registration Act and whereby such
7 client is responsible for any employer right or
8 obligation not otherwise allocated by the
9 professional employer agreement of the Oklahoma
10 Professional Employer Organization Recognition
11 and Registration Act, and

12 (2) such covered employee is entitled to enforce
13 against such client those duties and obligations
14 allocated to the client by the professional
15 employer agreement and the Oklahoma Professional
16 Employer Organization Recognition and
17 Registration Act and any other duties and
18 obligations of an employer not otherwise
19 allocated by the professional employer agreement
20 or the Oklahoma Professional Employer
21 Organization Recognition and Registration Act;

22 4. "Commissioner" means the Insurance Commissioner of the State
23 of Oklahoma;
24

1 5. "Covered Employee" means an individual having a coemployment
2 relationship with a PEO and a client who have entered into a
3 professional employer agreement with respect to such person, and
4 shall include the client's officers, directors, shareholders,
5 partners and managers to the extent such persons act as operational
6 managers or perform services for the client;

7 6. "Department" means the Department of Insurance of the State
8 of Oklahoma;

9 7. "Person" means any individual, partnership, corporation,
10 limited liability company, association, or any other form of legally
11 recognized entity;

12 8. "Professional employer agreement" means a written contract
13 by and between a client and a PEO under which the PEO and the client
14 agree to establish a coemployment relationship and which satisfies
15 the requirements of subsection C of Section ~~7 of this act~~ 600.7 of
16 this title;

17 9. "Professional Employer Organization" or PEO means any person
18 engaged in the business of providing professional employer services.
19 A person engaged in the business of providing professional employer
20 services shall be subject to registration under the Oklahoma
21 Professional Employer Organization Recognition and Registration Act
22 regardless of its use of the term "professional employer
23 organization", "PEO", "staff leasing company", "registered staff
24 leasing company", "employee leasing company", or any other name;

1 10. "Professional employer services" means the service of
2 entering into coemployment relationships under the Oklahoma
3 Professional Employer Organization Recognition and Registration Act,
4 in which, except in isolated instances, all or a majority of the
5 employees providing services to a client or to a division or work
6 unit of client are covered employees;

7 11. "Qualified attorney" means an attorney licensed to practice
8 in the jurisdiction in which such attorney is located who is
9 competent based on the attorney's education, training and experience
10 in matters requiring a statement, registration or certification for
11 a Professional Employer Organization (PEO) involving federal and
12 State of Oklahoma income tax withholding payment requirements,
13 payment of employer-sponsored health insurance premiums, payment of
14 State of Oklahoma unemployment and workers' compensation insurance
15 premiums, payment of financial contributions to employee retirement
16 plans and review or preparation of financial statements prepared in
17 accordance with generally accepted accounting principles;

18 12. "Registrant" means a PEO registered under the Oklahoma
19 Professional Employer Organization Recognition and Registration Act;
20 and

21 ~~12.~~ 13. "Temporary help services" means a service whereby a
22 person hires workers and assigns them to a person for a temporary
23 time period or nonpermanent basis to support or supplement the other
24 person's workforce in special work situations such as, but not

1 limited to, employee absences, temporary skill shortages, seasonal
2 workloads, and special assignments and projects. Temporary help
3 services shall not be deemed professional employer services.

4 SECTION 2. AMENDATORY 40 O.S. 2011, Section 600.4, as
5 amended by Section 1, Chapter 238, O.S.L. 2012 (40 O.S. Supp. 2020,
6 Section 600.4), is amended to read as follows:

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

14 B. Registration information.

15 1. Each PEO or PEO Group required to be registered under the
16 Oklahoma Professional Employer Organization Recognition and
17 Registration Act shall provide the Insurance Commissioner with
18 information required by the Commissioner on forms prescribed by the
19 Commissioner. Pursuant to paragraph 2 of this subsection, a PEO or
20 PEO Group may use a qualified assurance organization as approved by
21 the Commissioner to provide services related to the registration of
22 the PEO or PEO Group. A PEO or PEO Group may authorize an assurance
23 organization to act on behalf of the PEO or PEO Group in complying
24 with the registration requirements set forth in the Oklahoma

1 Professional Employer Organization Recognition and Registration Act,
2 including, but not limited to, electronic filings of information and
3 payment of registration fees. At a minimum, PEOs, PEO Groups or an
4 approved assurance organization acting on behalf of the PEO or PEO
5 Group, shall provide the following information:

- 6 a. the name or names under which the PEO or PEO Group
7 conducts business,
- 8 b. the address of the principal place of business of the
9 PEO or PEO Group and the address of each office it
10 maintains in this state,
- 11 c. the PEO's or PEO Group's taxpayer or employer
12 identification number,
- 13 d. a list by jurisdiction of each name under which the
14 PEO or PEO Group has operated in the preceding five
15 (5) years, including any alternative names, names of
16 predecessors and, if known, successor business
17 entities,
- 18 e. a statement of ownership, which shall include the name
19 and evidence of the business experience of any person
20 that, individually or acting in concert with one or
21 more other persons, owns or controls, directly or
22 indirectly, twenty-five percent (25%) or more of the
23 equity interests of the PEO or PEO Group,
24

- 1 f. a statement of management, which shall include the
2 name and evidence of the business experience of any
3 person who serves as president, chief executive
4 officer, or otherwise has the authority to act as
5 senior executive officer of the PEO or PEO Group, and
6 g. a financial statement setting forth the financial
7 condition of the PEO or PEO Group, as of a date not
8 earlier than one hundred eighty (180) days prior to
9 the date submitted to the Commissioner, prepared in
10 accordance with generally accepted accounting
11 principles, and certified by a qualified attorney or
12 audited or reviewed by an independent certified public
13 accountant licensed to practice in the jurisdiction in
14 which such accountant is located. A PEO Group may
15 submit combined or consolidated audited or reviewed
16 financial statements to meet the requirements of this
17 section.

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

- 23 a. evidence that is acceptable to the Commissioner that
24 it is licensed or registered in good standing in

1 another state with equal or greater requirements than
2 the requirements of the Oklahoma Professional Employer
3 Organization Recognition and Registration Act,

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

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

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

- 1 a. evidence that the assurance organization is
2 independent and has an established national program
3 for the accreditation and financial assurance of PEOs
4 and PEO Groups based on requirements similar to the
5 requirements of the Oklahoma Professional Employer
6 Organization Recognition and Registration Act, and any
7 rules promulgated for the implementation of the
8 Oklahoma Professional Employer Organization
9 Recognition and Registration Act,
- 10 b. evidence that the assurance organization has
11 documented qualifications, standards, procedures, and
12 financial assurance acceptable to the Commissioner and
13 is licensed or otherwise approved by one or more
14 states to certify the qualifications of PEOs or PEO
15 Groups,
- 16 c. an agreement to provide information, compliance
17 monitoring services, and a level of financial
18 assurance as deemed acceptable by the Commissioner,
- 19 d. an agreement to provide the Commissioner with an
20 application that has been executed by each PEO or PEO
21 Group requesting alternative registration under this
22 section and Section 600.6 of this title and related
23 requirements and procedures in a form approved by the
24 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

1 the requirements of the Oklahoma Professional
2 Employer Organization Recognition and
3 Registration Act and is qualified for
4 registration or renewal of registration under the
5 Oklahoma Professional Employer Organization
6 Recognition and Registration Act,

- 7 e. an agreement to provide written notice to the
8 Commissioner within two (2) business days of
9 determination by the assurance organization of the
10 failure of a PEO or PEO Group to meet the
11 qualifications for registration under the Oklahoma
12 Professional Employer Organization Recognition and
13 Registration Act or determination by the assurance
14 organization of the failure of the PEO or PEO Group to
15 meet the qualifications for accreditation or
16 certification by the assurance organization, and
17 f. an agreement to share with the Commissioner in a
18 timely manner the information and supporting
19 documentation provided to the assurance organization
20 by the PEO or PEO Group similar to the information and
21 documentation required for registration or renewal of
22 registration under the Oklahoma Professional Employer
23 Organization Recognition and Registration Act.

24 C. Initial registration.

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

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

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

13 a. remains in good standing and otherwise is entitled to
14 be registered pursuant to the Oklahoma Professional
15 Employer Organization Recognition and Registration
16 Act,

17 b. files with the Commissioner a renewal application on a
18 form prescribed by the Commissioner, and

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

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

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

6 F. Electronic filing and compliance. A PEO, PEO Group or an
7 approved independent and qualified assurance organization as
8 provided for in subsection B of this section may electronically
9 submit filings in conformance with Sections 15-101 through 15-121 of
10 Title 12A of the Oklahoma Statutes. Electronically submitted
11 filings include, but are not limited to, applications, documents,
12 reports, and other filings required under the Oklahoma Uniform
13 Electronic Transactions Act.

14 G. De minimis exemption.

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

- 18 a. submits a properly executed request for exemption on a
19 form provided by the Department,
- 20 b. is domiciled outside this state and is licensed or
21 registered as a professional employer organization in
22 another state that has the same or greater
23 requirements as the Oklahoma Professional Employer
24 Organization Recognition and Registration Act,

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

4 d. does not have more than twenty-five covered employees
5 employed or domiciled in this state.

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

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

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

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

19 K. The Commissioner may reject an application for registration,
20 renewal of registration, or for an exemption from registration if
21 the Commissioner finds that:

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

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

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

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

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

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

10 SECTION 3. AMENDATORY 40 O.S. 2011, Section 600.6, is
11 amended to read as follows:

12 Section 600.6. A. Net worth and bonding. Each PEO shall
13 maintain either:

14 1. A minimum net worth of Fifty Thousand Dollars (\$50,000.00),
15 as reflected in the financial statements submitted to the
16 Commissioner with the initial registration and each annual renewal;
17 or

18 2. A bond or securities with a minimum market value of Fifty
19 Thousand Dollars (\$50,000.00), held by a depository designated by
20 the Commissioner, securing payment by the PEO of all taxes, wages,
21 benefits or other entitlement due to or with respect to a covered
22 employee, if the PEO does not make such payments when due. Any bond
23 or securities deposited under this subsection shall not be included
24

1 for the purpose of calculation of the minimum net worth required by
2 this subsection.

3 B. Payroll tax payments. A PEO shall submit to the
4 Commissioner, within ninety (90) days after the end of each calendar
5 quarter, a statement by a qualified attorney or an independent
6 certified public accountant that all applicable state payroll taxes
7 for covered employees located in this state have been paid on a
8 timely basis for that quarter.

9 C. Record confidentiality. All records, reports and other
10 information obtained from a PEO under the Oklahoma Professional
11 Employer Organization Recognition and Registration Act, except to
12 the extent necessary for the proper administration of the Oklahoma
13 Professional Employer Organization Recognition and Registration Act
14 by the Department, shall be confidential and shall not be published
15 or open to public inspection other than to public employees in the
16 performance of their public duties.

17 SECTION 4. This act shall become effective November 1, 2021.
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