

1 **SENATE FLOOR VERSION**

2 February 4, 2021

3 SENATE BILL NO. 196

By: Rader

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

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

17 SECTION 1. AMENDATORY 40 O.S. 2011, Section 600.4, as
18 amended by Section 1, Chapter 238, O.S.L. 2012 (40 O.S. Supp. 2020,
19 Section 600.4), is amended to read as follows:

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

1 B. Registration information.

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

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

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

22 c. the PEO's or PEO Group's taxpayer or employer
23 identification number,
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- 1 d. a list by jurisdiction of each name under which the
2 PEO or PEO Group has operated in the preceding five
3 (5) years, including any alternative names, names of
4 predecessors and, if known, successor business
5 entities,
- 6 e. a statement of ownership, which shall include the name
7 and evidence of the business experience of any person
8 that, individually or acting in concert with one or
9 more other persons, owns or controls, directly or
10 indirectly, twenty-five percent (25%) or more of the
11 equity interests of the PEO or PEO Group,
- 12 f. a statement of management, which shall include the
13 name and evidence of the business experience of any
14 person who serves as president, chief executive
15 officer, or otherwise has the authority to act as
16 senior executive officer of the PEO or PEO Group, and
- 17 g. a financial statement setting forth the financial
18 condition of the PEO or PEO Group, as of a date not
19 earlier than one hundred eighty (180) days prior to
20 the date submitted to the Commissioner, prepared in
21 accordance with generally accepted accounting
22 principles, and certified by an attorney licensed to
23 practice in the jurisdiction in which such attorney is
24 located or audited or reviewed by an independent

1 certified public accountant licensed to practice in
2 the jurisdiction in which such accountant is located.
3 A PEO Group may submit combined or consolidated
4 audited or reviewed financial statements to meet the
5 requirements of this section.

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

- 11 a. evidence that is acceptable to the Commissioner that
12 it is licensed or registered in good standing in
13 another state with equal or greater requirements than
14 the requirements of the Oklahoma Professional Employer
15 Organization Recognition and Registration Act,
- 16 b. quarterly financial statements of management for each
17 calendar quarter as of the most recent audit that
18 demonstrate continuing financial operations acceptable
19 to the Commissioner, and
- 20 c. the certification of an attorney or an independent
21 Certified Public Accountant that as of the end of the
22 most recent calendar quarter, the PEO or PEO Group has
23 paid all of its state and federal payroll taxes,
24 health and workers' compensation premiums, and

1 contributions to employee retirement plans in a timely
2 and appropriate manner.

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

- 13 a. evidence that the assurance organization is
14 independent and has an established national program
15 for the accreditation and financial assurance of PEOs
16 and PEO Groups based on requirements similar to the
17 requirements of the Oklahoma Professional Employer
18 Organization Recognition and Registration Act, and any
19 rules promulgated for the implementation of the
20 Oklahoma Professional Employer Organization
21 Recognition and Registration Act,
22 b. evidence that the assurance organization has
23 documented qualifications, standards, procedures, and
24 financial assurance acceptable to the Commissioner and

1 is licensed or otherwise approved by one or more
2 states to certify the qualifications of PEOs or PEO
3 Groups,

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

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

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

20 (2) authorize the Commissioner to accept information
21 shared by the assurance organization for
22 registration or renewal of registration of the
23 PEO or PEO Group as if the information was
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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.

1 Before expiration of the registration, a registrant may renew the
2 registration for an additional one-year term if the registrant:

3 a. remains in good standing and otherwise is entitled to
4 be registered pursuant to the Oklahoma Professional
5 Employer Organization Recognition and Registration
6 Act,

7 b. files with the Commissioner a renewal application on a
8 form prescribed by the Commissioner, and

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

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

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

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

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

4 G. De minimis exemption.

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

- 8 a. submits a properly executed request for exemption on a
9 form provided by the Department,
- 10 b. is domiciled outside this state and is licensed or
11 registered as a professional employer organization in
12 another state that has the same or greater
13 requirements as the Oklahoma Professional Employer
14 Organization Recognition and Registration Act,
- 15 c. does not maintain an office in this state or solicit
16 in any manner clients located or domiciled within this
17 state, and
- 18 d. does not have more than twenty-five covered employees
19 employed or domiciled in this state.

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

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

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

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

10 K. The Commissioner may reject an application for registration,
11 renewal of registration, or for an exemption from registration if
12 the Commissioner finds that:

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

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

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

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

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

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

1 SECTION 2. AMENDATORY 40 O.S. 2011, Section 600.6, is
2 amended to read as follows:

3 Section 600.6. A. Net worth and bonding. Each PEO shall
4 maintain either:

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

9 2. A bond or securities with a minimum market value of Fifty
10 Thousand Dollars (\$50,000.00), held by a depository designated by
11 the Commissioner, securing payment by the PEO of all taxes, wages,
12 benefits or other entitlement due to or with respect to a covered
13 employee, if the PEO does not make such payments when due. Any bond
14 or securities deposited under this subsection shall not be included
15 for the purpose of calculation of the minimum net worth required by
16 this subsection.

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

23 C. Record confidentiality. All records, reports and other
24 information obtained from a PEO under the Oklahoma Professional

1 Employer Organization Recognition and Registration Act, except to
2 the extent necessary for the proper administration of the Oklahoma
3 Professional Employer Organization Recognition and Registration Act
4 by the Department, shall be confidential and shall not be published
5 or open to public inspection other than to public employees in the
6 performance of their public duties.

7 SECTION 3. This act shall become effective November 1, 2021.

8 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
9 February 4, 2021 - DO PASS
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