

HOUSE BILL No. 2092

By Committee on Commerce, Labor and Economic Development

Requested by Clay Barker on behalf of the Office of the Secretary of State

1-24

1 AN ACT concerning labor and employment; relating to professional
2 employer organizations; providing that registrations of such
3 organizations with the secretary of state shall expire on October 15
4 following issuance; providing an exception therefrom for registrations
5 issued on or after January 1, 2025, that shall expire on October 15,
6 2026; making the time for filing annual audits by such organizations
7 coincide with the time of renewing of registrations; limiting the means
8 of providing surety by a professional employer organization with
9 insufficient working capital to the provision of a bond and eliminating
10 the market value measure of the sufficiency of such bond; amending
11 K.S.A. 2024 Supp. 44-1704 and 44-1706 and repealing the existing
12 sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2024 Supp. 44-1704 is hereby amended to read as
16 follows: 44-1704. (a) A person engaged in the business of providing
17 professional employer services pursuant to co-employment relationships in
18 which all or a majority of the employees of a client are covered employees
19 shall be registered pursuant to this section.

20 (b) A person who is not registered pursuant to this section shall not
21 offer or provide professional employer services in this state, and shall not
22 use the names PEO, professional employer organization, staff leasing
23 company, employee leasing company, administrative employer or any
24 other name or title representing professional employer services.

25 (c) Each applicant for registration shall submit an application to the
26 secretary in such form and manner as prescribed by the secretary. The
27 application shall contain the following information:

28 (1) The name or names under which the professional employer
29 organization conducts business;

30 (2) the address of the principal place of business of the professional
31 employer organization, and the address of each office the professional
32 employer organization maintains in this state;

33 (3) the professional employer organization's taxpayer or employer
34 identification number;

35 (4) a list, by jurisdiction, of each name under which the professional

1 employer organization has operated in the preceding five years, including
2 any alternative names, names of predecessors and, if known, successor
3 business entities;

4 (5) a statement of ownership that shall include the name and evidence
5 of the business experience of any person that, individually, or acting in
6 concert with one or more other persons, owns or controls, directly or
7 indirectly, 15% or more of the equity interest of the professional employer
8 organization;

9 (6) a statement of management that shall include the name and
10 evidence of the business experience of any individual who serves as
11 president, chief executive officer or otherwise has the authority to act as
12 senior executive officer of the professional employer organization; and

13 (7) a financial statement setting forth the financial condition of the
14 professional employer organization or professional employer group that
15 shall comply with the provisions of subsection (h).

16 (d) Each professional employer organization not operating within this
17 state as of the effective date of this act shall complete its initial registration
18 prior to initiating operations within this state. If a professional employer
19 organization not registered in this state becomes aware that an existing
20 client, not based in this state, has employees and operations in this state,
21 the professional employer organization shall either decline to provide
22 professional employer services for those employees, or notify the secretary
23 within five business days of the professional employer organization's
24 knowledge of this fact and file a limited registration application pursuant
25 to subsection (g), or a full registration if there are more than 50 covered
26 employees employed by such client. The secretary may issue an interim
27 operating permit for the period of time the application is pending if the
28 professional employer organization is currently registered or licensed by
29 another state and the secretary determines it is in the best interests of the
30 potential covered employees.

31 (e) ~~A registrant's application~~ *registration* shall automatically expire
32 ~~120 days after the end of the registrant's fiscal year. Within 120 days after~~
33 ~~the end of a registrant's fiscal year, such on October 15 following the~~
34 *issuance of such registration, except that any such registration issued on*
35 *or after January 1, 2025, shall expire on October 15, 2026. A registrant*
36 *shall renew its registration by notifying the secretary of any changes in the*
37 *information provided in such registrant's most recent registration or*
38 *renewal. A registrant's existing registration shall remain in effect for the*
39 *period of time the renewal application is pending.*

40 (f) Professional employer organizations in a professional employer
41 group may satisfy any reporting and financial requirements of this section
42 on a combined or consolidated basis, provided that each member of the
43 professional employer group guarantees the financial capacity obligations

1 required by K.S.A. 44-1706, and amendments thereto, of each other
2 member of the professional employer group. In the case of a professional
3 employer group that submits a combined or consolidated audited financial
4 statement, including entities that are not professional employer
5 organizations or that are not in the professional employer group, the
6 controlling entity of the professional employer group under the
7 consolidated or combined statement must guarantee the obligations of the
8 professional employer organizations in the professional employer group.

9 (g) (1) A professional employer organization is eligible for a limited
10 registration if such professional employer organization:

11 (A) Submits a written request for limited registration in such form
12 and manner as prescribed by the secretary;

13 (B) is domiciled outside this state and is licensed or registered as a
14 professional employer organization in another state;

15 (C) does not maintain an office in this state or directly solicit clients
16 located or domiciled within this state; and

17 (D) does not have more than 50 covered employees employed or
18 domiciled in this state on any given day.

19 (2) A limited registration is valid for one year and may be renewed
20 thereafter.

21 (3) A professional employer organization requesting limited
22 registration under this subsection shall provide the secretary with such
23 information and documentation as required by the secretary to show that
24 the professional employer organization qualifies for a limited registration.

25 (4) The provisions of K.S.A. 44-1706, and amendments thereto, shall
26 not apply to applicants for limited registration.

27 (h) At the time of initial registration, the applicant shall submit the
28 most recent audit of the applicant or such applicant's parent holding
29 company. The most recent audit shall not be older than 13 months.
30 Thereafter, a professional employer organization or professional employer
31 group shall file on an annual basis, ~~within 120 days after the end of the~~
32 ~~professional employer organization's or parent holding company's fiscal~~
33 ~~year,~~ a succeeding audit ~~and, not older than 12 months, with such~~
34 *applicant's* renewal registration application. An applicant may apply to the
35 secretary for an extension of time to submit such audit, but any such
36 request shall be accompanied by a letter from the auditor stating the
37 reasons for the delay and the anticipated audit completion date. For the
38 initial application, if the closing date of the audited financial statements
39 required by this section is older than three months from the date of the
40 application, the application also shall include updated, unaudited financial
41 statements for the most recent quarter. The financial statement shall be
42 prepared in accordance with generally accepted accounting principles and
43 audited by an independent certified public accountant licensed to practice

1 in the jurisdiction in which such accountant is located and shall be without
2 qualification as to the going concern status of the professional employer
3 organization. A professional employer group may submit combined or
4 consolidated audited financial statements to meet the requirements of this
5 section. A professional employer organization that has not had sufficient
6 operating history to have audited financial statements based upon at least
7 12 months of operating history shall meet the financial capacity
8 requirements of subsection (f) and present financial statements reviewed
9 by a certified public accountant.

10 (i) The secretary shall maintain a list of professional employer
11 organizations registered under this section, and such list shall be readily
12 available to the public by electronic or other means.

13 (j) The secretary, to the extent feasible, shall permit the acceptance of
14 electronic filings, including initial registration and renewal applications,
15 documents, reports and other filings required by the secretary under this
16 section. The secretary may provide for the acceptance of electronic filings
17 and registration information for initial registration and renewal
18 applications, reports and other assurance documents by an independent
19 and qualified assurance organization approved by the secretary that
20 provides satisfactory assurance of compliance acceptable to the secretary
21 consistent with, or in lieu of, the requirements of this section and K.S.A.
22 44-1706, and amendments thereto. The secretary shall permit a
23 professional employer organization to authorize such assurance
24 organization approved by the secretary to act on the professional employer
25 organization's behalf, including electronic filings and provisions of
26 registration information for initial registration and renewal applications
27 and payment of registration fees in complying with the registration
28 requirements of subsections (c) through (h). Use of such an approved
29 assurance organization shall be optional and not mandatory for a
30 registrant. Nothing in this subsection shall limit or change the secretary's
31 authority to register or terminate registration of a professional employer
32 organization or to investigate or enforce any provision of K.S.A. 44-1701
33 through 44-1711, and amendments thereto.

34 Sec. 2. K.S.A. 2024 Supp. 44-1706 is hereby amended to read as
35 follows: 44-1706. Except as provided by K.S.A. 44-1704(g) and (j), and
36 amendments thereto, each professional employer organization, or
37 collectively each professional employer group shall either:

38 (a) Maintain positive working capital upon registration as reflected in
39 the financial statements submitted to the secretary with the initial
40 registration application and each renewal application; or

41 (b) for a professional employer organization or professional employer
42 group that does not have sufficient positive working capital as required in
43 subsection (a), submit a bond, ~~irrevocable letter of credit or securities~~ with

1 a minimum-~~market~~ value in an amount equal to the sum of the amount that
2 would be necessary for such professional employer organization or
3 professional employer group to comply with subsection (a) plus \$100,000
4 to the secretary at such time as the professional employer organization or
5 professional employer group does not have sufficient working capital.
6 Such bond shall be held by a depository designated by the secretary
7 securing payment by the professional employer organization of all taxes,
8 wages, benefits or other entitlement due to or with respect to covered
9 employees, if the professional employer organization does not make such
10 payments when due.

11 Sec. 3. K.S.A. 2024 Supp. 44-1704 and 44-1706 are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.