

HOUSE BILL NO. 254

INTRODUCED BY M. NIKOLAKAKOS, G. OVERSTREET, L. BENNETT, C. SCHOMER, E. TILLEMANN, D. ZOLNIKOV, E. BUTTREY, C. HINKLE, G. HUNTER, L. JONES, S. FITZPATRICK, K. ZOLNIKOV, L. DEMING, L. BREWSTER, J. KARLEN, F. MANDEVILLE, B. MITCHELL, G. NIKOLAKAKOS

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING FINGERPRINT BACKGROUND CHECKS AND OTHER REQUIREMENTS FOR PROFESSIONAL EMPLOYER ORGANIZATION APPLICANTS; AND AMENDING SECTION 39-8-202, MCA."

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

Section 1. 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 must meet one of the following applicable 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

1 agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not  
2 exist.

3 (c) A corporation shall state the names and home addresses of all officers, directors, and  
4 shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have  
5 filed any required documents with the secretary of state and shall remain in good standing to conduct business  
6 pursuant to this chapter.

7 (d) A limited liability company shall state the names and home addresses of those individuals who  
8 own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must  
9 have filed any required documents with the secretary of state and shall remain in good standing to conduct  
10 business pursuant to this chapter.

11 (e) A group:

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

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

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

18 (5) ~~(a)~~ An applicant shall also provide the following:

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

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

28 ~~(iii) other information requested by the department to show that the applicant and each controlling~~

1 person are of good moral character, have business integrity, and are financially responsible. "Good moral  
2 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair  
3 dealings; and respect for the rights of others and for the laws of this state and nation.

4 (b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant and  
5 any controlling person to submit fingerprints for the purpose of fingerprint checks by the Montana department of  
6 justice and the federal bureau of investigation.

7 (ii) The applicant and any controlling person shall sign a release of information to the department  
8 and are responsible to the department of justice for the payment of all fees associated with the criminal  
9 background check.

10 (iii) Upon completion of the criminal background check, the department of justice shall forward all  
11 criminal justice information, as defined in 44-5-103, concerning the applicant or any controlling person that  
12 involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

13 (iv) At the conclusion of any background check required by this section, the department must  
14 receive the criminal background check report but may not receive the fingerprint card of the applicant or of any  
15 controlling person. Upon receipt of the criminal background check report, the department of justice shall  
16 promptly destroy the fingerprint card of the applicant and of any controlling person.

17 (c) If an applicant or any controlling person has a history of criminal convictions, then pursuant to  
18 37-1-203, the applicant or controlling person has the opportunity to demonstrate to the department that the  
19 applicant or controlling person is sufficiently rehabilitated to warrant the public trust, and if the department  
20 determines that the applicant or controlling person is not, the license may be denied.

21 (6) (a) Except for an applicant who is granted a restricted license under subsection (9), an  
22 applicant shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by:

23 (i) providing financial statements that have been independently audited by a certified public  
24 accountant in accordance with generally accepted accounting principles; or

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

27 (b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting  
28 any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet

1 those obligations. The security deposit may not be used in determining the net worth of an applicant.

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

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

6 (iii) If an applicant is unable to meet the \$50,000 net worth requirement, the applicant shall provide  
7 to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an  
8 amount of not less than \$50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying  
9 wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter,  
10 the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those  
11 obligations.

12 (7) The applicant shall maintain a positive working capital, as evidenced by financial statements.

13 (8) The department may provide by rule for the acceptance, in lieu of the requirements of  
14 subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance  
15 organization that has been approved by the department certifying the qualifications of a professional employer  
16 organization or group seeking licensure under this chapter.

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

19 (a) the applicant's state of residence or domicile provides for licensing of professional employer  
20 organizations or groups and the applicant is licensed and in good standing in that state and that state grants a  
21 similar privilege for restricted licensing to professional employer organizations or groups that are residents of or  
22 domiciled in this state and that are licensed under this chapter;

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

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

26 (10) An applicant for a license shall appoint a recognized and approved entity as its registered  
27 agent to receive service of legal process issued against it in this state if a registered agent has not already been  
28 appointed.

