~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

April 30, 2009

**S. 484**

Introduced by Senators Sheheen and Ford

S. Printed 4/30/09--S. [SEC 5/1/09 12:23 PM]

Read the first time February 25, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑68‑95 SO AS TO PROVIDE DE MINIMIS OPERATIONS LICENSURE REQUIREMENTS FOR NONRESIDENT PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS; TO AMEND SECTION 40‑68‑30, AS AMENDED, RELATING TO LICENSURE REQUIREMENTS FOR PROFESSIONAL EMPLOYER ORGANIZATIONS, SO AS TO INCREASE APPLICATION FEES AND TO REQUIRE AN APPLICATION FEE FOR EACH COMPANY IN A PROFESSIONAL EMPLOYER ORGANIZATION GROUP; TO AMEND SECTION 40‑68‑40, AS AMENDED, RELATING TO QUALIFICATIONS TO BE LICENSED AS A PROFESSIONAL EMPLOYER ORGANIZATION AND QUALIFICATIONS TO SERVE AS A CONTROLLING PERSON OF A LICENSEE, SO AS TO DELETE A PROVISION AUTHORIZING ISSUANCE OF A NONRESIDENT RESTRICTED LICENSE WITHOUT THE REQUISITE TWO YEARS EXPERIENCE, TO MAKE TECHNICAL CORRECTIONS, AND TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 40‑68‑45, RELATING TO CONTINUING EDUCATION, SO AS TO PROVIDE THAT THE HOLDER OF A DE MINIMIS OPERATIONS LICENSE IS NOT REQUIRED TO TAKE CONTINUING EDUCATION, TO REVISE THE DEFINITION OF “KEY PERSONNEL” FOR CERTAIN PURPOSES, AND TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 40‑68‑50, AS AMENDED, RELATING TO LICENSURE AND RENEWAL FEES, SO AS TO REVISE INITIAL AND RENEWAL LICENSE FEES, TO DELETE NONRESIDINT PROFESSIONAL EMPLOYER ORGANIZATION LICENSE AND RENEWAL LICENSE FEES, AND TO DELETE PROVISIONS STATING MAXIMUM LICENSURE FEES; TO AMEND SECTION 40‑68‑90, AS AMENDED, RELATING TO RESTRICTED LICENSURE OF NONRESIDENT COMPANIES AND GROUPS, SO AS TO REVISE THE REQUIREMENTS FOR A RESTRICTED LICENSE AND TO AUTHORIZE THE DEPARTMENT OF CONSUMER AFFAIRS TO WAIVE THE AUDITED FINANCIAL STATEMENT REQUIREMENT FOR SUCH APPLICANTS; TO AMEND SECTION 40‑68‑100, AS AMENDED, RELATING TO ISSUANCE AND VALIDITY OF LICENSES, SO AS TO CLARIFY THE INITIAL LICENSURE PERIOD; TO AMEND SECTION 40‑68‑120, AS AMENDED, RELATING TO REQUIREMENTS FOR VARIOUS BENEFIT PROGRAMS FOR LICENSEES, INCLUDING WORKERS’ COMPENSATION PLANS AND HEALTH BENEFIT PLANS, SO AS TO REQUIRE BOTH PLANS TO BE LICENSED WITH THE DEPARTMENT OF INSURANCE; TO AMEND SECTION 40‑68‑140, AS AMENDED, RELATING TO REQUIREMENTS FOR LICENSEE NAME AND LOCATION CHANGES, SO AS TO ALSO REQUIRE A LICENSEE TO PROVIDE THE DEPARTMENT WITH OTHER CHANGES IN STATUS AS MAY BE REQUIRED; TO AMEND SECTION 40‑68‑160, AS AMENDED, RELATING TO GROUNDS FOR DISCIPLINARY ACTION AND DISCIPLINARY PROCEDURES, SO AS TO FURTHER SPECIFY PROCEDURES FOR PURSUING A CONTESTED CASE; TO AMEND SECTION 40‑68‑165, AS AMENDED, RELATING TO THE DEPARTMENT OF CONSUMER AFFAIRS OR THE ATTORNEY GENERAL ENFORCING THIS CHAPTER BY FILING AN ACTION IN THE CIRCUIT COURT, SO AS TO ALSO AUTHORIZE FILING AN ACTION IN THE ADMINISTRATIVE LAW COURT; AND TO AMEND SECTION 12‑54‑240, AS AMENDED, RELATING TO THE PROHIBITION AGAINST DISCLOSING RECORDS OF AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE AND EXCEPTIONS TO THIS PROHIBITION, SO AS TO INCLUDE IN THIS EXCEPTION THE DISCLOSURE OF INFORMATION RELATED TO PAYROLL WITHHOLDING TAXES TO THE DEPARTMENT OF CONSUMER AFFAIRS IN CONJUNCTION WITH THE DEPARTMENT LICENSING AND REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 68, Title 40 of the 1976 Code is amended by adding:

“Section 40‑68‑95. (A) The department may issue a de minimis operations license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the following conditions if the applicant:

(1) is domiciled outside this State and is licensed or registered as a professional employer organization in good standing in another state and is properly registered as a foreign entity with the South Carolina Secretary of State;

(2) does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and

(3) does not have more than ten leased employees working in this State.

(B) The Department may waive the requirement for an audited financial statement as set forth in Section 40‑68‑40(E) for applicants for a de minimis operations license.

(C) An applicant for a de minimis operations license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.”

SECTION 2. Section 40‑68‑30(D) of the 1976 Code is amended to read:

“(D) An application for a professional employer organization group license under Section 40‑68‑80 must provide the information required by this chapter for each member of the group. An applicant or licensee is ineligible for a license for one year after the date of final ~~departmental~~ action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:

(1) an inadvertent error or omission in the application if that error or omission is promptly corrected;

(2) the experience documented to the department was insufficient at the time of the previous application;

(3) the department was unable to complete the criminal background investigation required under Section 40‑68‑40 because of insufficient information received from a local, state, or federal law enforcement agency; or

(4) that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable, if that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.”

SECTION 3. Section 40‑68‑40(C), (E), and (G) of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“(C) Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or ~~renewed~~ renewal license.

(E) An applicant for an ~~original~~ initial or renewal license must demonstrate a net worth of at least fifty thousand dollars. The applicant shall demonstrate the net worth to the department by providing the department with the applicant’s audited financial statement. The net worth requirement also may be satisfied through guarantees, letters of credit, or other security acceptable to the department in a combined total amount of at least fifty thousand dollars. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty. ~~For applicants operating a professional employer organization or professional employer organization group on or before January 1, 1991, the net worth requirement will be satisfied by the documentation of a positive net worth.~~

(G)(1) An applicant and any controlling person must have at least two years of other related industry experience as approved by the department before the initial license is issued.

(2) ~~Notwithstanding subsection (G)(1), an applicant for a nonresident restricted license under Section 40‑68‑90 may be issued a license without the necessary two years’ experience.~~

~~(3)~~ However, notwithstanding subsection (G)(1), all ~~licensees filed~~ persons licensed before September 30, 2005, may continue to act as professional employment organizations after that date without regard to the experience requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40‑68‑45 and otherwise comply with this chapter.”

SECTION 4. Section 40‑68‑45(A) of the 1976 Code, as added by Act 112 of 2005, is amended to read:

“(A)(1) ~~Effective for license years beginning after September 30, 2005,~~ Key management personnel of all licensees must complete at least eight hours of continuing professional education annually.

(2) For purposes of this subsection~~:~~

~~(a)~~ ~~if the licensee is a sole proprietorship or partnership, “key personnel” means any controlling person, as defined in this chapter, of that licensee.~~

~~(b)~~ ~~if the licensee is a corporation,~~ ‘key personnel’ means any person who both:

~~(i)~~(a) possesses the power to direct or cause the direction of the management of a company seeking to offer professional employment services in this State; and

~~(ii)~~(b) is directly responsible for the day‑to‑day management of the company’s operations in this State.

(3) The holder of a ~~nonresident~~ restricted or de minimis operations license ~~under Section 40‑68‑90~~ issued pursuant to this chapter is not required to complete the continuing education required by this subsection.

(4) Up to eight hours of continuing professional education may be carried forward from one year to the next year~~; for the license year beginning September 30, 2005, up to eight hours of continuing professional education taken in the preceding twelve months may be carried forward~~.”

SECTION 5. Section 40‑68‑50 of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“Section 40‑68‑50. (A) An applicant for an ~~original~~ initial or renewal license shall pay a fee to the department on the issuance of the license or license renewal. License fees are assessed as follows:

(1) for initial licenses, in the first year of the biennium:

(a) two thousand dollars for a ~~resident~~ professional employer organization;

(b) four thousand dollars for a ~~resident~~ professional employer organization group;

(c) ~~two thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for a nonresident professional employer organization~~ five hundred dollars for a restricted license;

(d) ~~four thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is ten thousand dollars for each nonresident professional employer organization group~~ four hundred dollars for a de minimis operations license;

(2) for initial license, in the second year of the biennium:

(a) one thousand dollars for each ~~resident~~ professional employer organization;

(b) ~~three~~ four thousand five hundred dollars for each ~~resident~~ professional employer organization group;

(c) ~~one thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is two thousand five hundred dollars for a nonresident professional employer organization~~ five hundred dollars for a restricted license;

(d) ~~three thousand five hundred dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for each nonresident professional employer organization group~~ four hundred dollars for a de minimis operations license;

(3) for renewal licenses:

(a) fifteen hundred dollars for a professional employer organization;

(b) three thousand dollars for a professional employer organization group;

(c) ~~fifteen hundred dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident leasing company imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is three thousand seven hundred fifty dollars for a nonresident professional employer organization~~ five hundred dollars for a restricted license;

(d) ~~three thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is seven thousand five hundred dollars for each nonresident professional employer organization group~~ four hundred dollars for a de minimis operation license.

(B) In addition to the license fee, the department may levy a biennial assessment for each professional employer organization and each professional employer organization group sufficient to cover all costs for regulation of the profession pursuant to this chapter and other applicable provisions of law. The biennial assessment fee is:

(1) due and payable upon initial licensure and subsequent renewals and one year before the expiration of any licensure period; and

(2) based on the gross South Carolina payroll, excluding tips and gratuities, of a professional employer organization’s or professional employer organization group’s clients during the period beginning nine quarters before and ending one quarter before each assessment;

(3) calculated in accordance with the following table:

Amount of Gross Assessment Fee

South Carolina Payroll Due

less than $500,000 $ 500

$500,001‑$1,000,000 $ 750

$1,000,001‑$2,500,000 $ 1,000

$2,500,001‑$5,000,000 $ 1,250

$5,000,001‑$10,000,000 $ 1,750

$10,000,001‑$15,000,000 $ 2,250

$15,000,001‑$25,000,000 $ 3,000

$25,000,001‑$50,000,000 $ 3,750

over $50,000,000 $ 4,000

(C) In order to ensure compliance with the requirements of subsection (B), each licensee annually shall submit a statement of total gross South Carolina payroll, excluding tips and gratuities, along with copies of all South Carolina Unemployment Compensation tax returns for the preceding calendar year.

(D) ~~The total licensure fee and biennial assessments during a licensure period must not exceed:~~

~~(1)~~ ~~eight thousand seven hundred fifty dollars for a professional employer organization license; or~~

~~(2)~~ ~~ten thousand dollars for a professional employer organization group license issued under Section 40‑68‑90.~~

~~(E)~~ The department may change the anniversary date of the first biennium, as established in regulation 28‑910(3)(d), so that approximately one‑half of the applications for renewal licenses will be due on or before September ~~30~~ thirtieth of the biennium and the other half on or before March ~~30~~ thirtieth of the following year.”

SECTION 6. Section 40‑68‑90 of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“Section 40‑68‑90. (A) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the following conditions if the applicant:

(1) ~~applicant’s state of residence provides for licensing of professional employer organizations, the applicant is licensed and in good standing in its state of residence, and the applicant’s state of residence grants a similar privilege for restricted licensing to professional employer organizations or professional employer organization groups that are residents in South Carolina~~ is domiciled outside this State and is licensed or registered as a professional employer organization in good standing in another state and is properly registered as a foreign entity with the South Carolina Secretary of State;

(2) ~~applicant~~ does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and

(3) ~~applicant~~ does not have more than ~~forty~~ fifty leased employees working in this State.

(B) ~~An applicant for a restricted license is exempt from the requirements of Section 40‑68‑40(F)~~ The department may waive the requirement for an audited financial statement, as provided for in Section 40‑68‑40(E), for applicants for a restricted license.

(C) An applicant for a ~~nonresident or~~ restricted license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.”

SECTION 7. Section 40‑68‑100 of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“Section 40‑68‑100. The department shall issue a license to an applicant that meets the requirements of this chapter. The license must be issued not later than the ninetieth day after the date on which the completed application is filed with the department. A license issued by the department under this chapter is valid ~~for two years~~ until the end of the two‑year licensing cycle in which the application was filed. The department shall renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees.”

SECTION 8. Section 40‑68‑120(F) of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“(F) A licensee and client company both are deemed an employer and may sponsor and maintain benefit plans for assigned workers. An employee health benefit plan sponsored by a licensee for the benefit of assigned employees must be an insured health benefit plan offered by an insurer licensed under Title 38. The employee health benefit plans provided by a licensed insurance provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including The Employment Retirement Income Security Act (ERISA), 29 U.S.C. Section 101, et seq. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self‑insured, self‑funded, or other plans for health benefits, or workers’ compensation benefits that are not licensed with the Department of Insurance.”

SECTION 9. Section 40‑68‑140(C) of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“(C) A licensee must notify the department in writing of:

(1) a change in the location of its primary business office;

(2) the addition of more business offices; ~~or~~

(3) a change in the location of business records maintained by the licensee; or

(4) any other information relevant to change in status that may be required by the department.”

SECTION 10. Section 40‑68‑160(E) and (F) of the 1976 Code, as last amended by Act 128 of 2005, is further amended to read:

“(E) A person aggrieved by a disciplinary action, a denial of an application for a new or renewal license, a revocation or suspension of a license, or a determination that a controlling person is unqualified may ~~occur subject to the Administrative Procedures Act, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person. All contested hearings pursuant to this section are~~ request a contested case hearing before the Administrative Law Court in accordance with the court’s rules of procedure. If the person fails to request a contested case hearing within the time provided in the court’s rules of procedure, the administrative order becomes final and the department may bring an action to enforce its order pursuant to Section 1‑23‑600(F).

(F) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been corrected. If the department refuses to reinstate or renew the license, the affected licensee may request a contested case hearing before the Administrative Law Court in accordance with the court’s rules of procedure.”

SECTION 11. Section 40‑68‑165 of the 1976 Code, as last amended by Act 112 of 2005, is further amended to read:

“Section 40‑68‑165. The department or the Attorney General may file an action in the Administrative Law Court or circuit court to enforce the provisions of this chapter.”

SECTION 12. Section 12‑54‑240(B) of the 1976 Code, as last amended by Act 116 of 2007, is further amended by adding at the end:

“(29) disclosure of information related to payroll withholding taxes of businesses to the South Carolina Department of Consumer Affairs in conjunction with the department’s licensing and regulation of professional employer organizations pursuant to Chapter 68, Title 40.”

SECTION 13. This act takes effect upon approval by the Governor.

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