

1 HB513
2 54338-1
3 By Representatives Grimes, Brewbaker and Love
4 RFD: Commerce
5 First Read: 03-APR-03

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8 SYNOPSIS: Under existing law, there are no existing
9 laws governing the licensing and regulation of
10 entities that lease employees to other entities.

11 This bill would create the Alabama
12 Professional Employer Organization Licensing Act,
13 authorizing the Director of the Department of
14 Industrial Relations to promulgate any and all
15 necessary rules and regulations for the licensing
16 and conduct of organizations that lease employees
17 to other entities.

18 Amendment 621 of the Constitution of Alabama
19 of 1901 prohibits a general law whose purpose or
20 effect would be to require a new or increased
21 expenditure of local funds from becoming effective
22 with regard to a local governmental entity without
23 enactment by a 2/3 vote unless: it comes within one
24 of a number of specified exceptions; it is approved
25 by the affected entity; or the Legislature
26 appropriates funds, or provides a local source of
27 revenue, to the entity for the purpose.

1 The purpose or effect of this bill would be
2 to require a new or increased expenditure of local
3 funds within the meaning of Amendment 621. However,
4 the bill does not require approval of a local
5 governmental entity or enactment by a 2/3 vote to
6 become effective because it comes within one of the
7 specified exceptions contained in Amendment 621.

8
9 A BILL
10 TO BE ENTITLED
11 AN ACT

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13 To create the Alabama Professional Employer
14 Organization Licensing Act; to establish requirements for
15 licensing, including application fees and annual license fees;
16 to provide responsibilities of professional employer
17 organizations; to provide for disciplinary actions against
18 licensees by the Director of the Department of Industrial
19 Relations and to establish civil and criminal penalties for
20 violations of this act; and to authorize the Director of the
21 Department of Industrial Relations to perform investigations,
22 audits, or reviews of any licensed or potentially licensed
23 professional employer organization as necessary to carry out
24 the provisions of this act; and in connection therewith would
25 have as its purpose or effect the requirement of a new or
26 increased expenditure of local funds within the meaning of
27 Amendment 621 of the Constitution of Alabama of 1901.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. This act shall be known and may be cited
3 as the "Alabama Professional Employer Organization Licensing
4 Act."

5 Section 2. The Legislature recognizes that employee
6 leasing is a growing industry in the State of Alabama and,
7 therefore, deems it necessary in the interest of the welfare
8 of workers and employers to establish standards for the
9 operation, regulation, and licensing of professional employer
10 organizations in Alabama to be administered by the Workers'
11 Compensation Division of the Department of Industrial
12 Relations. It is the legislative intent that this be
13 accomplished pursuant to the Alabama Professional Employer
14 Organization Licensing Act.

15 Section 3. As used in this act, the following terms
16 shall have the following meanings:

17 (1) APPLICANT. A person or entity seeking to be
18 licensed under this act or seeking the renewal of a license
19 under this act.

20 (2) CLIENT. A person or entity that enters into a
21 professional employer agreement with a professional employer
22 organization.

23 (3) CONTROLLING PERSON. Any of the following:

24 a. An officer or director of a corporation operating
25 as a professional employer organization, a shareholder holding
26 10 percent or more of the voting stock of a corporation
27 operating as a professional employer organization, or a

1 partner of a partnership operating as a professional employer
2 organization.

3 b. Any individual who possesses, directly or
4 indirectly, the power to direct or cause the direction of the
5 management or policies of a company operating as a
6 professional employer organization through the ownership of
7 voting securities, by contract or otherwise, and who is
8 actively involved in the day-to-day management of the company.

9 c. Any individual employed, appointed, or authorized
10 by a professional employer organization to enter into a
11 contractual relationship with a client company on behalf of
12 the professional employer organization.

13 (4) DEPARTMENT. The Alabama Department of Industrial
14 Relations.

15 (5) DIRECTOR. The Director of the Alabama Department
16 of Industrial Relations.

17 (6) LICENSEE. A person licensed as a professional
18 employer organization under this act. The term also includes
19 persons or entities licensed as professional employer
20 organization groups.

21 (7) PERSON. Any individual, partnership,
22 corporation, limited liability company, association, firm, or
23 any other form of legally recognized entity.

24 (8) PROFESSIONAL EMPLOYER ORGANIZATION. Any person
25 engaged in the business of providing professional employer
26 services through one or more professional employer
27 organization arrangements. A person engaged in the business of

1 providing professional employer services shall be subject to
2 licensing under this act regardless of its use of the term
3 "professional employer organization," "PEO," "staff leasing
4 company," "registered staff leasing company," "employee
5 leasing company," or any other name. For purposes of this act,
6 the term does not include temporary help services.

7 (9) PROFESSIONAL EMPLOYER ORGANIZATION ARRANGEMENTS.

8 An arrangement under contract whereby employees of a
9 professional employer organization are assigned or leased, or
10 both, to work at a client company and in which employment
11 responsibilities are shared by the professional employer
12 organization and the client company. The employee's assignment
13 is intended to be of a long-term or continuing nature, rather
14 than temporary or seasonal in nature.

15 (10) TEMPORARY EMPLOYEE. A person employed either
16 through a staffing service or directly by an employer to
17 support or supplement the existing work force in special
18 situations such as employee absences, temporary skill
19 shortages, seasonal workloads, special assignments, and
20 projects with the expectation that the person's position will
21 be terminated upon the completion of the task or function.
22 Services performed by temporary employees are not considered
23 employee leasing arrangements.

24 Section 4. The department shall adopt regulations or
25 administrative rules necessary for the administration of this
26 act. Administrative rules must be adopted in compliance with
27 the Administrative Procedure Act. Any and all licensees are

1 governed and controlled by this act and the administrative
2 rules adopted by the department.

3 Section 5. Information, statements, financial
4 statements, transcriptions of proceedings, transcriptions or
5 recordings, electronic recordings, letters, memoranda, and any
6 other document or report obtained from any applicant, client
7 employing unit or employer in accordance with the
8 administration of this act, except to the extent necessary for
9 the proper administration and enforcement of this act, shall
10 be held confidential and not available for public inspection.

11 Section 6. No person may engage in or offer services
12 as a professional employer organization without first
13 procuring a license under this act.

14 Section 7. The term "professional employer
15 organization arrangement" is to be liberally construed so as
16 to include any and all arrangements meeting the criteria set
17 forth by this act, by whatever term known. The employer
18 responsibilities are deemed allocated between or shared by the
19 professional employer organization and client whenever the
20 arrangement, agreement, or contract between the client and the
21 professional employer organization expressly provides for such
22 or whenever a substantive analysis of the client's service or
23 business process reveals that the client, or someone acting on
24 his or her behalf and in his or her interest, exercises some
25 degree of control over the "employees" method and manner of
26 work performed.

1 Section 8. (a) Every person desiring to operate as a
2 professional employer organization shall file with the
3 director a completed application, on a form prescribed and
4 furnished by the director, accompanied with a nonrefundable
5 application fee of five hundred dollars (\$500). In addition to
6 the completed application, each applicant shall also file any
7 forms, materials, and information as is necessary to enable
8 the director to ascertain if the applicant meets the
9 requirements of this act. The applicant shall furthermore file
10 any forms, materials, and information as is necessary to
11 enable the director to ascertain whether individuals
12 affiliated with the applicant are qualified to serve as
13 controlling persons.

14 (b) Applicants for licensing as a professional
15 employer organization shall meet the following minimum
16 standards:

17 (1) If an individual, the applicant must be the age
18 of majority.

19 (2) If a partnership, the applicant shall submit the
20 names and residential addresses of all partners and indicate
21 whether each partner is a general or a limited partner. The
22 applicant shall include a copy of the partnership agreement
23 or, if not available, an affidavit signed by all partners to
24 the effect that no written partnership agreement exists.

25 (3) If a corporation, the applicant shall submit the
26 names and residential addresses of all officers, directors,

1 and shareholders who own a 10 percent or greater interest in
2 the corporation.

3 (4) The applicant shall provide the trade name or
4 names under which the applicant conducts business, its
5 taxpayer or employer identification number, and the address of
6 its principal place of business in this state and any other
7 office within this state through which the applicant intends
8 to conduct business as a professional employer organization.
9 If the applicant's principal place of business is located in
10 another state, that address shall be provided, along with a
11 statement indicating whether the applicant is licensed as a
12 professional employer organization in that other state. If so,
13 the applicant shall submit a copy of the license issued by the
14 other state.

15 (5) The applicant shall provide a list of
16 jurisdictions and each name or names under which the applicant
17 has operated professional employer organization services
18 during the preceding five years, including any alternative
19 names, names of predecessors, and names of related business
20 entities with common majority ownership. The applicant shall
21 also provide detailed information on the background of each
22 controlling person to the extent deemed necessary by the
23 director.

24 (6) The applicant shall provide any other
25 information the director deems necessary to show that the
26 applicant and each controlling person thereof has a record of
27 good moral character, business integrity, and financial

1 responsibility. A thorough background investigation of the
2 applicant and each controlling person may be instituted by the
3 director.

4 (7) The applicant for an original or renewal license
5 must demonstrate a net worth as follows:

6 a. One hundred thousand dollars (\$100,000) if the
7 applicant employs fewer than 500 leased employees.

8 b. Two hundred thousand dollars (\$200,000) if the
9 applicant employs at least 500 but not more than 1,000 leased
10 employees.

11 c. Two hundred fifty thousand dollars (\$250,000) if
12 the applicant employs more than 1,000 leased employees.

13 (8) For each applicant having a gross Alabama
14 payroll of two million five hundred thousand dollars
15 (\$2,500,000) or more, net worth shall be demonstrated by
16 providing a copy of the most recent independently audited
17 financial statement with accompanying financial notes prepared
18 in accordance with generally accepted accounting principles,
19 consistently applied, and accompanied by a certification by an
20 independent certified public accountant.

21 For each applicant having a gross Alabama payroll of
22 less than two million five hundred thousand dollars
23 (\$2,500,000), net worth shall either be demonstrated by
24 providing a copy of the most recently reviewed annual
25 financial statement, or an independently audited financial
26 statement as provided for above. All reviewed financial

1 statements must be prepared in accordance with generally
2 accepted accounting principles.

3 Documents submitted to establish net worth shall
4 reflect net worth as of a date not more than six months before
5 the date on which the application is submitted. In calculating
6 net worth, an applicant shall include adequate reserves for
7 all taxes and insurance, including reserves for claims
8 incurred but not paid and for claims incurred but not reported
9 under plans of self-insurance.

10 For all renewal certificates, the audited and
11 reviewed financial statements as described herein shall be
12 submitted to the director within 90 days of the licensee's
13 fiscal year end. For purposes of this requirement, "submitted"
14 means that the financial statement must be postmarked within
15 90 days of the end of the fiscal year. Failure to provide the
16 director with a copy of the financial statements within 90
17 days of the close of the licensee's fiscal year end shall
18 subject the licensee to an administrative penalty of fifty
19 dollars (\$50) per day for each day the financial statement is
20 overdue for a maximum of 30 days, at which time license
21 revocation proceedings shall begin.

22 (c) Every licensed professional employer
23 organization shall have at least one full-time administrator
24 or representative of the professional employer organization at
25 the designated place of business in this state.

26 (d) Each licensee shall maintain a registered agent
27 for the service of process in Alabama.

1 (e) Each applicant or licensee shall provide the
2 director with a complete listing of its client employers. The
3 licensee shall be responsible for providing the director with
4 an updated complete listing of its client employers as it
5 changes. Failure to provide the director with a complete and
6 current listing of the licensee's client employers shall
7 constitute good cause for revocation of a license issued under
8 this act.

9 (f) Each applicant or licensee shall be responsible
10 for posting a security deposit with the department to insure
11 the payment of workers' compensation, payroll taxes and any
12 additional payments or responsibilities of the licensee as
13 stated in this act. The security amount shall be in the form
14 of a cash deposit with the Alabama State Treasury, or a surety
15 bond, using bond language as prescribed by the director. Each
16 licensee shall be responsible for providing the security in an
17 amount that corresponds to their net worth requirements as
18 determined by subdivision (7) of subsection (b).

19 (g) Any license or certificate issued shall remain
20 the property of the director, and a licensee shall immediately
21 return same to the director upon demand by the director or his
22 authorized representative.

23 (h) Each professional employer organization
24 operating within this state as of the effective date of this
25 act shall complete its initial application for licensure
26 approval not later than 90 days after the effective date of
27 this act.

1 (i) Each professional employer organization not
2 operating within this state as of the effective date of this
3 act shall complete its initial registration prior to
4 commencement of operations within this state.

5 (j) Any license issued under this act shall be
6 nontransferable. Any transfer or sale of stock or other
7 ownership interest in a licensee that results in a change in
8 the ownership of a majority of voting power over the stock or
9 other ownership interest within a 12-month period shall be
10 deemed a transfer of the license and shall require a new
11 application by the licensee.

12 Section 9. (a) The director or an authorized
13 representative may deny any application for license upon a
14 finding that the applicant has failed to meet or maintain any
15 requirement of this act.

16 (b) An applicant or licensee shall be ineligible for
17 a license for a period of one year after the date of final
18 departmental action on the denial or revocation of a license
19 applied for or issued under this act. This restriction does
20 not apply to a denial or revocation of a license if the basis
21 of the action was any of the following:

22 (1) An inadvertent error or omission in the
23 application if that error or omission is promptly corrected.

24 (2) The experience documented to the department was
25 insufficient at the time of the previous application.

26 (3) The department was unable to complete the
27 criminal background investigation required herein because of

1 insufficient information received from a local, state, or
2 federal law enforcement agency.

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

8 Section 10. (a) To be qualified to serve as a
9 controlling person of a license under this act, a person must
10 be at least 18 years of age, be of good moral character, and
11 have educational, managerial, or business experience relevant
12 to the operation of a business entity offering professional
13 employer organization services; or services as a controlling
14 person of a professional employer organization.

15 For purposes of this section, "good moral character"
16 means a personal history of honesty, trustworthiness,
17 fairness, a good reputation for fair dealing, and respect for
18 the rights of others and for the laws of this state and
19 nation.

20 (b) The department shall conduct a background
21 investigation of each individual applicant and of each
22 controlling person of each applicant. The department shall
23 additionally require fingerprinting of each applicant or each
24 controlling person, or both, to determine whether the
25 applicant or controlling person is qualified under this act.
26 The department may deny an application for the issuance or
27 renewal of a license if it finds that a controlling person is

1 not qualified. Any investigation shall include: 1. The
2 submission of fingerprints for processing through appropriate
3 local, state, and federal law enforcement agencies; and 2.
4 Examination by the department, if necessary, of police or
5 other law enforcement records maintained by local, state, or
6 federal law enforcement agencies.

7 (c) Conviction of a crime does not automatically
8 disqualify a controlling person, require the revocation of a
9 license, or require the denial of an application for a new or
10 renewed license.

11 Section 11. (a) The fee for any first year profes-
12 sional employer organization license shall be two thousand
13 five hundred dollars (\$2,500). The annual fee for the renewal
14 of a license shall not be less than five hundred dollars
15 (\$500) nor more than five thousand dollars (\$5,000). The fee
16 for a renewal of a professional employer organization license
17 shall be calculated in accordance with the following table:

18 Amount of Gross Alabama	
19 Payroll	License Fee Due
20 Less than \$250,000	\$ 500
21 \$250,000 - \$500,000	\$1,000
22 \$500,001 - \$1,000,000	\$1,250
23 \$1,000,001 - \$2,500,000	\$1,500

1	\$2,500,001 - \$5,000,000	\$2,000
2	\$5,000,001 - \$7,500,000	\$2,500
3	\$7,500,001 - \$10,000,000	\$3,000
4	\$10,000,001 - \$15,000,000	\$3,500
5	\$15,000,001 - \$20,000,000	\$4,000
6	\$20,000,001 - \$30,000,000	\$4,250
7	\$30,000,001 - \$40,000,000	\$4,500
8	\$40,000,001 - \$50,000,000	\$4,750
9	greater than \$50,000,000	\$5,000

10 (b) Fees for an initial license or renewal license
11 shall be submitted at the time of application and made payable
12 to the Employee Leasing Administrative Trust Fund. All license
13 fees shall be nonrefundable.

14 (c) The director shall have the complete authority
15 to determine the nature and amount of all appropriate fees as
16 necessary to implement and administer this act.

17 Section 12. (a) Any license shall remain in force,
18 unless canceled or revoked, for one year from the date of
19 issuance of the license. The licensee shall demonstrate each
20 year continued compliance with all requirements of this act,
21 including, without limitation, all requirements set forth
22 herein for initial application.

1 (b) Upon 30 days' notice and hearing to the
2 licensee, the director, for financial reasons, for failure of
3 the professional employer organization to faithfully discharge
4 his or her obligations according to the agreements contained
5 in its application for licensure, or for the violation of any
6 provision of this act or rule prescribed pursuant to this act,
7 may refuse to renew or revoke the license of the professional
8 employer organization, in which case the professional employer
9 organization shall immediately cease operations within the
10 state.

11 Section 13. (a) In addition to imposing the
12 penalties as established in Sections 15, 16, and 17, the
13 director may suspend for up to 12 months, may permanently
14 revoke, or may refuse to renew any license issued hereunder
15 if, after notice to the licensee, the director finds any one
16 or more of the following causes to exist:

17 (1) Any cause for which issuance of the license
18 could have been refused had it then existed and been known to
19 the director.

20 (2) Violation of or noncompliance with any
21 applicable provision of this act or of any order of the
22 director.

23 (3) Obtaining or attempting to obtain any license
24 through misrepresentation or fraud.

25 (4) Conviction of the licensee, or any controlling
26 person designated in the license, of any felony or crime which
27 demonstrates the person's lack of good moral character,

1 business integrity or the inability to handle financial
2 responsibility.

3 (5) If in the conduct of business under the license,
4 the licensee violates any provision of this act or order of
5 the director.

6 (b) The license of a partnership, corporation, or
7 group may be suspended, revoked, or not renewed for any of the
8 causes set out in subsection (a) as such cause relates to any
9 controlling person designated in the license to exercise
10 powers of the partnership, corporation, or group. The
11 licensee, however, shall have the option of severing its
12 relationship or connection with the individual controlling
13 person and, if it chooses to do so, the licensee may be
14 allowed to maintain its current license.

15 Section 14. (a) A licensed professional employer
16 organization shall perform the following general
17 responsibilities as a licensee:

18 (1) All professional employer organization
19 arrangements shall have a written contract between the client
20 and the professional employer organization recognizing each
21 party's rights, responsibilities, and duties. The contract
22 shall disclose to the client the services to be rendered by
23 the professional employer organization, including charges and
24 fees, the respective rights and obligations of the parties,
25 and provide that the professional employer organization does
26 the following:

1 a. Reserves a right of direction and control over
2 worksite employees and exercises that right in the context of
3 the need to do so. The client, however, as the worksite
4 employer, may retain sufficient direction and control over
5 worksite employees as is necessary to conduct its business
6 and, without which, the client would be unable to conduct its
7 business, discharge any fiduciary responsibility or comply
8 with any applicable licensure, regulatory, or statutory
9 requirement.

10 b. Assumes responsibility for the payment of wages
11 and related payroll taxes of its worksite employees without
12 regard to payment by the client to the professional employer
13 organization.

14 c. Maintains ultimate authority to hire, terminate,
15 discipline, and reassign worksite employees, subject to the
16 terms of any collective bargaining agreements which may exist.

17 d. Maintains ultimate authority to resolve and
18 decide worksite employee grievances and disputes, subject to
19 the terms of any collective bargaining agreements which may
20 exist.

21 e. Maintains a right to evaluate worksite safety, a
22 right to inspect the worksite premises and a right to request
23 corrective actions by the worksite employer to ensure that
24 worksite employees are working in safe environments.

25 (2) Submit to the director, within 90 days of the
26 end of each calendar quarter, a certification by an

1 independent certified public accountant that all quarterly
2 applicable payroll taxes have been paid on a timely basis.

3 (3) Maintain and make available for the director's
4 inspection any and all records concerning the licensee's
5 conduct of business under its license. The records shall be
6 maintained for a period of three years after termination of
7 the employment relationship or professional employer
8 organization arrangement.

9 (4) Notify the director in writing of a change of
10 business address within 30 days of the change.

11 (5) Notify the director in writing of any changes
12 among partners, directors, officers, members, and controlling
13 persons designated in the license within 30 days of the
14 change.

15 (6) Post a copy of its professional employer
16 organization license in each of its business offices within
17 this state. The license shall be placed in a conspicuous place
18 and in clear public view. A notice shall be posted therewith
19 stating that the professional employer organization is
20 licensed and regulated by the director and that any questions
21 or complaints should be directed to the director.

22 (b) A licensed professional employer organization
23 shall be deemed an employer of its worksite employees and
24 shall perform the following responsibilities:

25 (1) Pay wages and collect, report, and pay
26 employment related taxes.

27 (2) Report and pay unemployment taxes.

1 (3) Maintain workers' compensation coverage for all
2 Alabama employees as required by law. No license shall be
3 issued to any professional employer organization until the
4 professional employer organization files with the director
5 evidence of workers' compensation coverage for all worksite
6 employees in this state. A licensed professional employer
7 organization, within 30 days, shall notify the director and
8 the workers' compensation insurance carrier, if applicable, of
9 the initiation of a new client or the termination of the
10 professional employer organization's relationship with any
11 client for which the professional employer organization
12 provides services for worksite employees within this state. A
13 licensed professional employer organization must further
14 notify the director and its clients within 10 days of any
15 notice of cancellation of workers' compensation coverage.
16 Failure to provide the notices shall subject the licensee to
17 an administrative penalty of fifty dollars (\$50) per day for
18 each day past the required notice, and a revocation of the
19 professional employer organization license.

20 (c) A professional employer organization and the
21 client company shall each benefit under the exclusive remedy
22 provisions of the Workers' Compensation Act.

23 Section 15. (a) The following acts and omissions are
24 deemed to constitute deceptive practices and are prohibited
25 for professional employer organizations and a controlling
26 person:

1 (1) Making, issuing, circulating, or causing to be
2 made any estimate, illustration, circular, statement,
3 advertisement, sales presentation, omission, or comparison
4 which misleads, deceives, or misrepresents the benefits,
5 advantages, conditions, or terms of any professional employer
6 organization arrangement.

7 (2) Entering into any agreement to commit or, by any
8 concerted action, committing any act of boycott, coercion, or
9 intimidation that results or tends to result in the
10 unreasonable restraint of, or monopoly in, the business of
11 providing professional employer organization services.

12 (3) Filing with the director or other public
13 official, or making, publishing, disseminating, circulating,
14 or delivering to any person any false statement of financial
15 condition of a person or business with the intent to deceive.

16 (4) Knowingly making any false entry of a material
17 fact in any book, report, or statement of any person or
18 business, or, knowingly omitting to make a true entry of any
19 material fact pertaining to the business of the person in any
20 book, report, or statement of that person.

21 (5) Allowing the use or filing of any name, trade
22 name, fictitious name, or business identity which is the same
23 as, similar to, or may be confused with the name, trade name,
24 fictitious name, or business identity of any existing
25 licensee, any governmental agency, or any nonprofit
26 organization.

1 (6) Any other practice or behavior that is deemed to
2 be deceptive by law.

3 (b) Any licensee or controlling person of the
4 licensee who is found to be guilty of the acts contained in
5 subsection (a) above shall be subject to having its license
6 revoked pursuant to the provisions of this act.

7 Section 16. (a) The following acts constitute
8 grounds for which disciplinary action against a licensee may
9 be taken by the director:

10 (1) Being convicted of or entering a plea of nolo
11 contendere to any of the following:

12 a. Bribery, fraud, or willful misrepresentation in
13 obtaining, attempting to obtain, or renewing a license.

14 b. A crime in any jurisdiction which relates to the
15 operation of a professional employer organization or the
16 ability to engage in business as a professional employer
17 organization.

18 c. Fraud, deceit, or misconduct in the
19 classification of employees and reporting of employee wages
20 under the Alabama Workers' Compensation Act.

21 d. Fraud, deceit, or misconduct in the establishment
22 of or maintenance of workers' compensation coverage,
23 regardless of whether self-insured or otherwise.

24 e. Fraud, deceit, or misconduct in the operation of
25 a professional employer organization.

26 (2) Conducting a professional employer organization
27 business without a valid and active license.

1 (3) Failing to maintain evidence of the workers'
2 compensation insurance coverage required in accordance with
3 this act.

4 (4) Transferring or attempting to transfer a license
5 issued under this act.

6 (5) Violating any provision of this act or any
7 lawful order issued or rule adopted under this act.

8 (6) Failing to notify the director in writing of any
9 change of the primary business address or the addresses of any
10 of the licensee's offices in the state.

11 (7) Having been confined in any county, state, or
12 federal prison, post-adjudication, for any crime committed
13 which would challenge the ability or veracity of the licensee
14 or controlling person thereof to be entrusted with any
15 business or fiduciary duty.

16 (8) Having been confined in any mental institution
17 or, when through mental disease or deterioration, the licensee
18 or controlling person thereof can no longer safely be
19 entrusted to deal with the public or in a confidential
20 capacity.

21 (9) Having been found guilty of any misconduct that
22 warrants suspension, or being found guilty of a course of
23 conduct or practices that show that the licensee is so
24 incompetent, negligent, dishonest, or untruthful that the
25 money, property, transactions, and rights of investor, or
26 those with whom the licensee may sustain a confidential
27 relation, may not safely be entrusted to the licensee.

1 (10) Failing to inform the director in writing
2 within 30 days after being convicted of or entering a plea of
3 nolo contendere to any felony, regardless of adjudication.

4 (11) Determination of liability for civil fraud by
5 any court of competent jurisdiction in any state.

6 (12) Adverse material action by any state or federal
7 regulatory agency for violations within the scope of control
8 of the licensee.

9 (13) Failure to inform the director in writing
10 within 30 days of an adverse material action by a state or
11 federal regulatory agency.

12 (14) Failure to meet or maintain the requirements
13 for licensure as a professional employer organization.

14 (15) Attempting to obtain, obtaining, or renewing a
15 license as a professional employer organization by bribery,
16 misrepresentation, or fraud.

17 (b) Upon finding that a licensee has violated one or
18 more provisions of Section 16(a), the director may take one or
19 more of the following actions:

20 (1) Deny an application for licensure.

21 (2) Revoke, suspend, restrict, or decline to renew a
22 license.

23 (3) Impose an administrative fine not to exceed one
24 thousand dollars (\$1,000) for every count or separate offense.

25 (4) Issue a reprimand.

1 (5) Place the licensee on probation for a period of
2 time and subject to any conditions as the director may
3 specify.

4 (6) Impose upon the licensee the cost of
5 investigation and prosecution, including reasonable attorney
6 fees.

7 (c) Upon revocation or suspension of a license, the
8 licensee shall immediately return the license and all client
9 and worksite certificates to the director.

10 Section 17. (a) Any person who engages in the
11 business of or acts as a professional employer organization
12 without first procuring a license, or otherwise violates the
13 provisions of this act or any rules and regulations
14 promulgated by the director in accordance with this act, shall
15 be liable for a civil penalty for each offense of one hundred
16 dollars (\$100) for each count or separate offense. Each day of
17 continued violation shall constitute a separate offense.

18 (b) In addition to the penalties provided for in
19 this act, the director may take whatever regulatory or legal
20 action necessary to enjoin or restrain any person who engages
21 in the business of or acts as a professional employer
22 organization without having first procured a license.

23 (c) The controlling person or persons of a
24 professional employer organization who, from a client,
25 collects payments representing wages, taxes, benefit payments,
26 or insurance payments and fails to remit the same to the

1 appropriate governmental or private entity shall be guilty of
2 a Class C felony.

3 (d) The controlling person or persons of a client of
4 a professional employer organization who, for the purpose of
5 procuring payroll checks without having adequate funds to
6 compensate and reimburse such professional employer
7 organization shall be guilty of a Class C felony.

8 Section 18. The director may make, or cause to be
9 made, investigations, audits, or reviews within or without the
10 state as the director deems necessary for the following:

11 (1) To determine whether a person has violated or is
12 in danger of violating any provision of this act, including
13 any regulation or rule promulgated hereunder.

14 (2) To aid in the enforcement of this act, including
15 any regulation or rule promulgated hereunder.

16 Section 19. Any and all civil penalties collected
17 under the provisions of this act shall be deposited in the
18 Professional Employer Organization Licensing Administrative
19 Trust Fund.

20 Section 20. Nothing contained in this act shall be
21 construed to exempt a client, professional employer
22 organization or any worksite employee of a client or
23 professional employer organization from any other state,
24 local, or federal licensure or registration requirement.

25 Section 21. (a) There is established in the State
26 Treasury a fund entitled the Professional Employer
27 Organization Licensing Administrative Trust Fund, into which

1 shall be deposited certain fees and assessments provided by
2 this act collected by the Department of Industrial Relations.
3 The fund shall constitute a separate fund to be disbursed by
4 the state Comptroller on order of the director. All expenses
5 incurred by the department under this act, including the
6 salaries of all employees, travel cost, and any other cost of
7 administration and enforcement as may become necessary, either
8 within or without the state, shall be paid from the separate
9 fund in the State Treasury upon warrants of the state
10 Comptroller drawn upon the State Treasury from time to time
11 when vouchers therefor are approved by the director. The State
12 Treasurer shall pay monies from the separate fund upon the
13 order of the director. The total expense for every purpose
14 incurred shall not exceed the total fees and assessments
15 collected and paid into the fund. All monies remaining
16 unexpended in the separate fund at the end of the fiscal year
17 shall remain in the State Treasury to be expended as herein
18 provided.

19 (b) The State Treasurer shall determine if the money
20 in the trust fund shall be kept in cash or invested. The
21 moneys in the fund may be invested by the State Treasurer and
22 all moneys and interest remaining unexpended in the separate
23 fund provided at the end of the fiscal year shall remain in
24 the State Treasury to be expended as herein provided.

25 (c) The director is designated as trustee of the
26 fund and the State Treasurer is designated as custodian of the
27 fund and both shall furnish bonds in amounts deemed

1 appropriate. The cost of bonds for the trustee, custodian, and
2 other employees or officials required to post bond in
3 connection with the program shall be paid out of the fund.

4 Section 22. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621 because the
8 bill defines a new crime or amends the definition of an
9 existing crime.

10 Section 23. This act shall become effective on the
11 first day of the third month following its passage and
12 approval by the Governor, or its otherwise becoming law.