

# HOUSE BILL No. 1253

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-4.

**Synopsis:** Professional employer organizations. Provides that for purposes of the unemployment compensation system law a professional employer organization (PEO): (1) that enters into a professional employer agreement is not treated as a successor employer or as receiving a transfer of a trade or business; (2) that elects to use the PEO level reporting method is liable for contributions, interest, penalties, and surcharges for the duration of a professional employer agreement unless the PEO elects to change to the client level reporting method; and (3) is permitted to apply certain wages to the maximum amount of wages that are subject to contributions to the system. Provides that certain changes in a PEO relationship do not make a client a successor employer. Provides that a PEO that has made an election to use the client level reporting method may file a request for clearance with the department of workforce development.

**Effective:** July 1, 2021.

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January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.

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First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

# HOUSE BILL No. 1253

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 22-4-6.5-10, AS AMENDED BY P.L.122-2019,
- 2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2021]: Sec. 10. (a) The following apply to a PEO that elects
- 4 to use the PEO level reporting method:
- 5 (1) The PEO shall file all quarterly reports in accordance with
- 6 IC 22-4-10-1.
- 7 (2) Whenever the PEO enters into a professional employer
- 8 agreement with a client, the PEO
- 9 (A) shall notify the department not later than fifteen (15) days
- 10 after the end of the quarter in which the professional employer
- 11 agreement became effective. ~~and~~
- 12 (B) is subject to IC 22-4-10-6 and IC 22-4-11.5, beginning on
- 13 the effective date of the professional employer agreement.
- 14 (3) The PEO shall notify the department in the form and manner
- 15 prescribed by the department not later than fifteen (15) days after
- 16 the date of the following:
- 17 (A) The PEO and a client terminate a professional employer



- 1 agreement.
- 2 (B) The PEO elects the client level reporting method under
- 3 section 11 of this chapter.
- 4 ~~After receiving a notice under this subdivision, the department~~
- 5 ~~shall make any changes required by IC 22-4-10-6 and~~
- 6 ~~IC 22-4-11.5.~~
- 7 (b) ~~Except as provided by IC 22-4-32-21(d),~~ A PEO that elects to
- 8 use the PEO level reporting method is liable for all contributions,
- 9 interest, penalties, and surcharges **for the duration of a professional**
- 10 **employer agreement or** until the effective date of an election under
- 11 section 11 of this chapter by the PEO to change to the client level
- 12 reporting method.
- 13 (c) **A PEO is not, as a result of entering into a professional**
- 14 **employer agreement with a client, considered to be a successor**
- 15 **employer under IC 22-4-10-6. A PEO's act of entering into a**
- 16 **professional employer agreement with a client does not constitute**
- 17 **a transfer of all or part of trade or business under IC 22-4-11.5-7.**
- 18 (d) **A client of a PEO is not, as a result of:**
- 19 (1) **entering into a professional employer agreement; or**
- 20 (2) **terminating a professional employer agreement;**
- 21 **with the PEO, considered to be a successor employer under**
- 22 **IC 22-4-10-6 or IC 22-4-11.5-7.**
- 23 (e) **A PEO, in a calendar year during which the PEO enters into**
- 24 **a professional employer agreement with a client, may apply any**
- 25 **wages paid to a covered employee in that calendar year by the**
- 26 **client or by another PEO on behalf of that client under a**
- 27 **professional employer agreement with that client toward the**
- 28 **maximum amount of the taxable wages established under**
- 29 **IC 22-4-4-2(b).**
- 30 (f) **Upon termination of a professional employer agreement**
- 31 **between a PEO and a client, the client shall be treated as a new**
- 32 **employer unless the client is otherwise eligible to retain the**
- 33 **experience account balance, liabilities, and wage credits.**
- 34 SECTION 2. IC 22-4-6.5-13, AS ADDED BY P.L.33-2013,
- 35 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 36 JULY 1, 2021]: Sec. 13. (a) ~~A client that transfers between PEOs is~~
- 37 **Upon termination of a client's professional employer agreement**
- 38 **with a PEO, followed by the immediate initiation of a professional**
- 39 **employer agreement with another, not commonly owned, managed**
- 40 **or controlled PEO, the subsequent PEO and client are not subject**
- 41 **to IC 22-4-10-6 and IC 22-4-11.5. whenever:**
- 42 (†) ~~the PEOs are not commonly owned, managed, or controlled;~~



1 and

2 ~~(2) both PEOs have elected to use the PEO level reporting~~  
 3 ~~method.~~

4 (b) The client of a PEO that has elected to use the client level  
 5 reporting method may elect to become liable for payments in lieu of  
 6 contributions (as defined in IC 22-4-2-32) whenever:

7 (1) the client is otherwise eligible to make the election; and

8 (2) the requirements of IC 22-4-10-1 are met.

9 SECTION 3. IC 22-4-32-21, AS AMENDED BY P.L.122-2019,  
 10 SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2021]: Sec. 21. (a) Any individual, group of individuals, or  
 12 other legal entity, whether or not an employing unit which acquires all  
 13 or part of the organization, trade, or business within this state of an  
 14 employer or which acquires all or part of the assets of the organization,  
 15 trade or business, shall notify the commissioner in the form and manner  
 16 prescribed by the department not later than five (5) days prior to the  
 17 acquisition.

18 (b) Unless the notice is given, the commissioner shall have the right  
 19 to proceed against either the predecessor or successor, in personam or  
 20 in rem, for the collection of contributions and interest due or accrued  
 21 and unpaid by the predecessor, as of the date of the acquisition, and the  
 22 amount of the liability shall, in addition, be a lien against the property  
 23 or assets so acquired which shall be prior to all other liens. However,  
 24 the lien shall not be valid as against one who acquires from the  
 25 successor any interest in the property or assets in good faith, for value  
 26 and without notice of the lien.

27 (c) On request in the form and manner prescribed by the department  
 28 after the acquisition is completed, the commissioner shall furnish the  
 29 successor with a statement of the amount of contributions and interest  
 30 due or accrued and unpaid by the predecessor as of the date of the  
 31 acquisition, and the liability of the successor and the amount of the lien  
 32 shall in no event exceed the reasonable value of the property or assets  
 33 acquired by the successor from the predecessor or the amount disclosed  
 34 by the statement, whichever is the lesser.

35 (d) An acquirer described in subsection (a) or a professional  
 36 employer organization **that has made an election** under ~~IC 22-4-6.5~~  
 37 **IC 22-4-6.5-11** may file a request for clearance in the form and manner  
 38 prescribed by the department at least five (5) business days before an  
 39 acquisition or transfer. After filing a request, the acquirer or  
 40 professional employer organization is entitled to receive a statement  
 41 indicating whether an account being acquired or transferred is in good  
 42 standing with the department as of the date of the transfer. If the



1 statement shows that the account that is being acquired or transferred  
2 is in good standing with the department at the time of the transfer, and  
3 the department later discovers an outstanding liability associated with  
4 the acquired or transferred account, the department:  
5 (1) may not assess a delinquent employer rate modification under  
6 IC 22-4-11-2 based on the account for which a statement was  
7 made under this subsection; and  
8 (2) in the case of a PEO **that has made an election under**  
9 **IC 22-4-6.5-11**, shall administratively separate the acquired or  
10 transferred client account from the PEO until the liability is  
11 recovered.  
12 (e) The remedies prescribed by this section are in addition to all  
13 other existing remedies against the predecessor or successor.

