

Title 23. Public Utilities and Regulated Industries
Chapter I. State Insurance Department, Department of Commerce
Subchapter A. Generally
Part 32. Employer Service Assurance Organizations

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"SECTION 1. AUTHORITY

This rule is promulgated and adopted by the Insurance Commissioner for the State of Arkansas ("Commissioner") pursuant to the authority vested in the Commissioner by Section 1 of Act 1750 of 2003, codified as Arkansas Code Annotated §§23-92-401, et seq., by Acts 652 of 1993, codified as Arkansas Code Annotated —§§23-61-709, and by Arkansas Code Annotated §§23-61-108 and 25-15-201, et seq."

"SECTION 3. EFFECTIVE DATE

Pursuant to the Commissioner's authority under Ark. Code Ann. §23-61-108, §§25-15-201, et seq., and other applicable laws and rules, the effective date of this rule is February 1, 2004."

Subpart 1. Generally

23 CAR § 32-101. Purpose.

The purpose of this part is:

- (1) To set forth the need for the licensing of employer service assurance organizations;
 - (2) To establish minimum standards for the conduct of those organizations;
- and
- (3) For promulgating procedures for their licensing.

Authority. Arkansas Code §§ 23-61-108, 23-92-419.

23 CAR § 32-102. Definitions.

Unless otherwise noted, definitions applicable to this part shall be the same as found in Arkansas Code § 23-92-402.

Authority. Arkansas Code §§ 23-61-108, 23-92-419.

23 CAR § 32-103. Fees.

(a) The initial fee for an ESAO shall be five hundred dollars (\$500) for the initial fee and five hundred dollars (\$500) for each biennial renewal.

(b) All fees are nonrefundable.

Authority. Arkansas Code §§ 23-61-108, 23-92-407, 23-92-419.

Codification Notes. "ESAO" means employer service assurance organization.

23 CAR § 32-104. Employer service assurance organizations.

(a) The Insurance Commissioner has determined that it is in the best interest of the State of Arkansas to license one (1) or more ESAOs pursuant to the authority granted under Arkansas Code §§ 23-92-415 and 23-92-419 in order to:

(1) Provide greater financial protection for the state and for the clients and employees employed by a professional employer organization (PEO) that is qualified to participate in the services of an ESAO; and

(2)(A) Assist the commissioner in minimizing the cost of administration of the licensing of all ESAO-qualified PEOs in accordance with Acts 2003, No. 1750.

(B) Pursuant to the commissioner's authority under Arkansas Code § 23-92-414, the commissioner shall accept an affidavit of a licensed ESAO provided on behalf of a duly qualified PEO in lieu of the requirements under Arkansas Code §§ 23-92-404 – 23-92-406 and 23-92-408 and the fees provided for in Arkansas Code § 23-

92-407, provided the ESAO is in compliance with Arkansas Code §§ 23-92-415 – 23-92-418 and applicable provisions of this part.

(b) Every initial application required under Arkansas Code § 23-92-415 shall be submitted by using the State Insurance Department ESAO-A1 Licensing Application and shall be accompanied by the initial licensing fee of five hundred dollars (\$500) as required by subdivision (a)(2)(B) of this section.

(c) The license issued to an ESAO shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked, provided the licensee remains in compliance with all provisions of Arkansas Code §§ 23-92-415 – 23-92-418.

(d) As a condition of continued licensing, the commissioner may request any information available to the ESAO about any PEO for which the ESAO has submitted an affidavit.

(e) In the event of the failure of a professional employer organization that is licensed pursuant to an ESAO affidavit to comply with any provision of Acts 2003, No. 1750, or with any provision of Rule and Regulation 58 [repealed], the commissioner shall provide the ESAO with thirty (30) days written notice prior to taking action against any bond provided by the ESAO under Arkansas Code § 23-92-415(c)(1)(E) to allow the ESAO to otherwise cure the default or pay the claim before a claim is filed against the bond or bonds.

(f) If a claim is filed by the commissioner against the one hundred thousand-dollar bond provided by a licensed ESAO under Arkansas Code § 23-92-415(c)(1)(E)(i)(b), the ESAO must provide as a condition of continued licensing an additional one hundred thousand-dollar bond or equivalent security acceptable to the commissioner within thirty (30) days of written notice of the filing of a claim.

Authority. Arkansas Code §§ 23-61-108, 23-92-407, 23-92-414, 23-92-419.

Codification Notes. "ESAO" means employer service assurance organization.

23 CAR § 32-105. License not assignable.

(a) A licensee may not conduct business under any name other than that specified in the license.

(b) A license issued under this part is not assignable.

(c) A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the Insurance Commissioner.

(d) A licensee may not conduct business under more than one (1) name unless it has obtained a separate license for each name.

Authority. Arkansas Code §§ 23-61-108, 23-92-419.

23 CAR § 32-106. Interpretation.

This part shall be construed in accordance with Acts 2003, No. 1750.

Authority. Arkansas Code §§ 23-61-108, 23-92-419.

23 CAR § 32-107. Severability.

If any provision of this part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to that end the provisions of this part are severable.

Authority. Arkansas Code §§ 23-61-108, 23-92-419.