

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS75180-LTf-37A (3/8)

Short Title: Revise Professional Employer Organization Act. (Public)

Sponsors: Senators Bingham, and Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT
3 BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER
4 CERTAIN CIRCUMSTANCES, DECREASING THE FEE FOR LIMITED
5 LICENSES, ESTABLISHING THE REQUIREMENTS FOR LIMITED
6 LICENSES, REQUIRING THE COMMISSIONER OF INSURANCE TO ADOPT
7 RULES FOR ALTERNATIVE LICENSES, PROVIDING THAT APPLICANTS
8 FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE
9 COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID
10 BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND
11 ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED
12 UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW
13 GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR
14 ORGANIZATIONS APPLYING FOR LICENSURE PRIOR TO MARCH 31, 2006,
15 CHANGING THE EFFECTIVE DATE FOR LICENSURE OF PROFESSIONAL
16 EMPLOYER ORGANIZATIONS TO JULY 1, 2005, PROVIDING A
17 TRANSITION PERIOD FOR ORGANIZATIONS REGISTERING UNDER
18 ARTICLE 89 OF CHAPTER 58 OF THE GENERAL STATUTES, AND
19 AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE
20 REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER
21 ORGANIZATIONS.

22 The General Assembly of North Carolina enacts:

23 **SECTION 1.** G.S. 58-89A-50 reads as rewritten:

24 "**§ 58-89A-50. Surety bond; letter of credit.**

25 (a) An applicant for licensure shall file with the Commissioner a surety bond in
26 the amount of one hundred thousand dollars (\$100,000) in favor of the State of North
27 Carolina.

1 (b) The surety bond required by this section shall be in a form acceptable to the
2 Commissioner, issued by an insurer authorized by the Commissioner to write surety
3 business in this State, and maintained in force while the license remains in effect or any
4 obligations or liabilities of the applicant, licensee or PEO previously licensed by this
5 State remain outstanding.

6 (c) The surety bond required by this section may be exchanged or replaced with
7 another surety bond if (i) the surety bond applies to obligations and liabilities that arose
8 during the period of the original surety bond, (ii) the surety bond that meets the
9 requirements of this section if section, and (iii) 90 days' advance written notice is
10 provided to the Commissioner.

11 (d) A licensee shall not require a client company to contribute in any manner to
12 the payment of the surety bond required by this section.

13 (e) Notice of cancellation or nonrenewal of the surety bond required by this
14 section shall be provided to the Commissioner in writing at least 45 days before
15 cancellation or nonrenewal.

16 (e1) A surety bond may be cancelled by the issuer of the bond with respect to
17 future obligations or liabilities upon proper notice pursuant to this section and without
18 regard to approval or acceptance of the Commissioner.

19 (f) In lieu of the surety bond required by this section, an applicant may submit to
20 the Commissioner an irrevocable letter of credit in a form acceptable to the
21 Commissioner issued by a financial institution, the deposits of which are insured by the
22 Federal Deposit Insurance Corporation, or may maintain on deposit with the
23 Commissioner an amount equal to the amount required under subsection (a) of this
24 section in cash or in value of securities of the kind specified in G.S. 58-5-20 and subject
25 to the same conditions as the surety bond.

26 (g) This section does not apply to persons who are licensed pursuant to the
27 alternative licensing procedures set forth in G.S. 58-89A-76."

28 **SECTION 2.** G.S. 58-89A-65 reads as rewritten:

29 "**§ 58-89A-65. Fees.**

30 (a) Each applicant for a professional employer organization license ~~or limited~~
31 ~~professional employer organization license~~ shall pay to the Commissioner, before the
32 issuance of the license, a nonrefundable application fee of one thousand dollars
33 (\$1,000).

34 (b) Each licensee shall pay to the Commissioner when filing the information
35 required under G.S. 58-89A-70(d) an annual filing fee of one thousand dollars (\$1,000).

36 (c) Each applicant for (i) alternative licensing under G.S. 58-89A-76 and each
37 applicant for G.S. 58-89A-76, (ii) renewal of a license provided under G.S. 58-89A-76
38 license, or (iii) a limited professional employer organization license shall pay to the
39 Commissioner, before issuance or renewal of the license, a fee of five hundred dollars
40 (\$500.00).

41 (d) When the Commissioner finds that a licensee has committed an act that is a
42 ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has
43 committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes
44 final following the conclusion of all administrative or judicial proceedings, the

1 Commissioner may charge an applicant or licensee reasonable fees to recover the
2 Department's costs associated with investigations, inspections, examinations, and any
3 other administrative or enforcement responsibilities created under this Article.

4 (e) Fees collected by the Commissioner under this Article shall be deposited in
5 the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this
6 Article."

7 **SECTION 3.** G.S. 58-89A-75 reads as rewritten:

8 "**§ 58-89A-75. Limited license.**

9 The ~~Commissioner, by rule,~~ Commissioner shall provide for the issuance of a
10 limited license to a person who seeks to offer limited professional employer services in
11 this State. A person shall satisfy the requirements for a limited license if the
12 professional employer organization:

- 13 (1) Does not maintain a physical professional employer organization
14 office located in this State;
- 15 (2) Does not employ salespersons who reside or direct their sales activities
16 in this State;
- 17 (3) Does not employ more than 50 covered employees in this State;
- 18 (4) Does not advertise through any media outlet physically located in this
19 State; and
- 20 (5) Is a licensed or registered professional employer organization in at
21 least one other state of the United States."

22 **SECTION 4.** G.S. 58-89A-76 reads as rewritten:

23 "**§ 58-89A-76. Alternative licensing.**

24 The ~~Commissioner, by rule, may~~ Commissioner shall provide for the acceptance of
25 an affidavit by a bonded, independent, and qualified assurance organization that has
26 been approved by the Commissioner certifying the qualifications of a professional
27 employer organization for licensing under this Article in lieu of the requirements of
28 G.S. 58-89A-40 through G.S. 58-89A-60. A professional employer organization
29 licensed under this section shall be exempt from the provisions of G.S. 58-89A-70(c),
30 (d), and (e)."

31 **SECTION 5.** G.S. 58-89A-110(d) reads as rewritten:

32 "(d) A license shall not be issued to any professional employer organization unless
33 (i) the organization first files with the Commissioner evidence of workers' compensation
34 coverage for all assigned employees in this State, including those leased from or
35 coemployed with another person, and that the premium paid by the licensee is person,
36 and (ii) the organization certifies to the Commissioner that it has provided its workers'
37 compensation carrier with proper and necessary documentation to allow the carrier to
38 determine and charge a premium that is commensurate with exposure and anticipated
39 claim experience for all employees covered under policies issued by the carrier in the
40 name of the licensee."

41 **SECTION 6.** For any initial application for a license pursuant to
42 G.S. 58-89A-60 that is received by the Commissioner of Insurance prior to March 31,
43 2006, the Commissioner shall accept a GAAP financial statement that has been

1 prepared within the previous 180 days and that covers a fiscal year that ended December
2 31, 2004, or later.

3 **SECTION 7.** Section 2 of S.L. 2004-162 reads as rewritten:

4 "**SECTION 2.** The Department of Insurance shall report to the ~~2005-~~ 2007 General
5 Assembly on the implementation, administration, and enforcement of Article 89 of
6 Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the
7 Department shall recommend any statutory changes required to regulate professional
8 employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

9 **SECTION 8.** Section 3 of S.L. 2004-162 reads as rewritten:

10 "**SECTION 3.** A person registered to engage in and offer professional employer
11 services in this State, pursuant to G.S. 58-89-15, on the last day prior to the effective
12 date of this act and a person who applies for and receives a registration pursuant to
13 G.S. 58-89-15 prior to September 30, 2005, may continue to operate pending approval
14 of the person's application for a license as long as the application is filed with the
15 Commissioner no later than ~~April 1, 2005.~~ October 1, 2005. If the application for
16 licensure is denied, the person shall cease offering professional employer services in
17 this State. A person not registered to engage in and offer professional employer
18 services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective~~
19 ~~date of this act~~ October 1, 2005, shall not engage in or offer professional employer
20 services in this State until the person has been issued a license under this act.

21 The Department shall continue to accept applications for registration and shall
22 continue to issue registrations for professional employer organizations pursuant to
23 G.S. 58-89-15, which shall be valid through September 30, 2005."

24 **SECTION 9.** Effective January 1, 2005, Section 5 of S.L. 2004-162 reads as
25 rewritten:

26 "**SECTION 5.** This act becomes effective ~~January 1, 2005,~~ July 1, 2005, and
27 applies to any contracts entered into, any business conducted, and any actions taken on
28 or after that date. Article 89 of Chapter 58 of the General Statutes shall continue in effect
29 until July 1, 2005."

30 **SECTION 10.** G.S. 58-6-25(d) is amended by adding a new subdivision to
31 read:

32 "(9) Money appropriated to the Department of Insurance for the regulation
33 of the professional employer organization industry pursuant to Article
34 89A of Chapter 58 of the General Statutes."

35 **SECTION 11.** Effective July 1, 2005, there is appropriated from the
36 Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance
37 the sum of one hundred fifty thousand dollars (\$150,000) for the 2005-2006 fiscal year
38 for the regulation of the professional employer organization industry pursuant to Article
39 89A of Chapter 58 of the General Statutes.

40 **SECTION 12.** Except as otherwise expressly provided in this act, this act is
41 effective when it becomes law.