

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 685
Commerce Committee Substitute Adopted 3/24/05**

Short Title: Revise Professional Employer Organization Act.

(Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

1
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
7 PROVIDE 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 ON OR BEFORE JUNE 30,
15 2005, CHANGING THE EFFECTIVE DATE FOR LICENSURE OF
16 PROFESSIONAL EMPLOYER ORGANIZATIONS TO JULY 1, 2005,
17 PROVIDING A TRANSITION PERIOD FOR ORGANIZATIONS REGISTERING
18 UNDER 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.

28 (b) The surety bond required by this section shall be in a form acceptable to the
29 Commissioner, issued by an insurer authorized by the Commissioner to write surety

1 business in this State, and maintained in force while the license remains in effect or any
2 obligations or liabilities of the applicant, licensee or PEO previously licensed by this
3 State remain outstanding.

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

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

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

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

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

24 (g) This section does not apply to persons who are licensed pursuant to the
25 alternative licensing procedures set forth in ~~G.S. 58-89A-76~~, G.S. 58-89A-76 or to
26 persons who are limited licensees pursuant to G.S. 58-89A-75.

27 (h) The license of any licensee that fails to provide and maintain a surety bond,
28 letter of credit, cash, or securities pursuant to this section shall be subject to immediate
29 suspension."

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

31 **"§ 58-89A-65. Fees.**

32 (a) Each applicant for a professional employer organization license ~~or limited~~
33 ~~professional employer organization license~~ shall pay to the Commissioner, before the
34 issuance of the license, a nonrefundable application fee of one thousand dollars
35 (\$1,000).

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

38 (c) Each applicant for (i) alternative licensing under ~~G.S. 58-89A-76~~ and ~~each~~
39 ~~applicant for G.S. 58-89A-76~~, (ii) renewal of a ~~license provided under G.S. 58-89A-76~~
40 license, or (iii) a limited professional employer organization license shall pay to the
41 Commissioner, before issuance or renewal of the license, a fee of five hundred dollars
42 (\$500.00).

43 (d) When the Commissioner finds that a licensee has committed an act that is a
44 ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has

1 committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes
2 final following the conclusion of all administrative or judicial proceedings, the
3 Commissioner may charge an applicant or licensee reasonable fees to recover the
4 Department's costs associated with investigations, inspections, examinations, and any
5 other administrative or enforcement responsibilities created under this Article.

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

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

10 "**§ 58-89A-75. Limited license.**

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

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

24 A professional employer organization operating under a limited license shall be subject
25 to all of the responsibilities and authorities of a licensee under this Article except for
26 G.S. 58-89A-50, G.S. 58-89A-60 and G.S. 58-89A-70(c), (d), and (e). The
27 Commissioner may require an application for limited license requiring sufficient
28 information to verify the provisions of this section. For the purposes of this section,
29 employees shall include the employees in this State of any professional employer
30 organization under the applicant's common control as defined in G.S. 58-89A-5(5)."

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

32 "**§ 58-89A-76. Alternative licensing.**

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

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

41 "(d) A license shall not be issued to any professional employer organization unless
42 (i) the organization first files with the Commissioner evidence of workers' compensation
43 coverage for all assigned employees in this State, including those leased from or
44 coemployed with another person, and that the premium paid by the licensee is person,

1 and (ii) the organization certifies to the Commissioner that it has provided its workers'
2 compensation carrier with proper and necessary documentation to allow the carrier to
3 determine and charge a premium that is commensurate with exposure and anticipated
4 claim experience for all employees covered under policies issued by the carrier in the
5 name of the licensee."

6 **SECTION 6.** Section 2 of S.L. 2004-162 reads as rewritten:

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

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

13 "SECTION 3. A person registered to engage in and offer professional employer
14 services in this State, pursuant to G.S. 58-89-15, on the last day prior to the effective
15 date of this act and a person who applies for and receives a registration pursuant to
16 G.S. 58-89-15 prior to June 30, 2005, may continue to operate pending approval of the
17 person's application for a license as long as the application is filed with the
18 Commissioner no later than ~~April 1, 2005.~~ July 1, 2005. If the application for licensure
19 is denied, the person shall cease offering professional employer services in this State. A
20 person not registered to engage in and offer professional employer services in this State,
21 pursuant to G.S. 58-89-15, ~~on the last day prior to the effective date of this act~~ July 1,
22 2005, shall not engage in or offer professional employer services in this State until the
23 person has been issued a license under this act.

24 The Department shall continue to accept applications for registration and shall
25 continue to issue registrations for professional employer organizations pursuant to
26 G.S. 58-89-15, which shall be valid through June 30, 2005.

27 Notwithstanding any other provision of this act, an audited GAAP financial
28 statement filed with the Commissioner by an applicant for licensure that otherwise
29 meets the requirements of this act shall be accepted by the Commissioner if it has been
30 filed with the Commissioner on or before June 30, 2005, has been prepared within the
31 previous 180 days, and covers a fiscal year that ended December 31, 2004, or later."

32 **SECTION 8.** Effective January 1, 2005, Section 5 of S.L. 2004-162 reads as
33 rewritten:

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

38 **SECTION 9.** G.S. 58-6-25(d) is amended by adding a new subdivision to
39 read:

40 "(9) Money appropriated to the Department of Insurance for the regulation
41 of the professional employer organization industry pursuant to Article
42 89A of Chapter 58 of the General Statutes."

43 **SECTION 10.** Effective July 1, 2005, there is appropriated from the
44 Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance

1 the sum of one hundred fifty thousand dollars (\$150,000) for the 2005-2006 fiscal year
2 for the regulation of the professional employer organization industry pursuant to Article
3 89A of Chapter 58 of the General Statutes.

4 **SECTION 11.** Except as otherwise expressly provided in this act, this act is
5 effective when it becomes law.