

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 20

Short Title: Regulate Professional Employer Organization. (Public)

Sponsors: Senators Bingham, Rand; Allran, Carpenter, Clodfelter, Forrester, Foxx,
Garwood, Hartsell, Horton, Shubert, Tillman, and Webster.

Referred to: Judiciary II.

February 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE LICENSURE OF PROFESSIONAL EMPLOYER
3 ORGANIZATIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 89 of Chapter 58 of the General Statutes is rewritten to
6 read:

7 "Article 89.

8 "North Carolina Professional Employer Organization Act.

9 "Part 1. In General.

10 "§ 58-89-1. Title.

11 This Article shall be known and may be cited as the "North Carolina Professional
12 Employer Organization Act".

13 "§ 58-89-5. Definitions.

14 In this Article:

15 (1) "Applicant" means a person applying for a license under this Article.

16 (2) "Assigned employee" means an employee who is performing services
17 for a client company under a contract between a licensee and a client
18 company in which employment responsibilities are shared. "Assigned
19 employee" does not include an employee hired to support or
20 supplement a client company's workforce in a special work situation,
21 including:

22 a. An employee absence.

23 b. A temporary skill shortage.

24 c. A seasonal workload.

25 d. A special assignment or project.

26 (3) "Client company" means a person that contracts with a licensee and is
27 assigned employees by the licensee under that contract.

- 1 (4) "Control", including the terms "controlling", "controlled by", and
2 "under common control with" have the same meanings as in G.S.
3 58-19-5(2).
- 4 (5) "Employee leasing services" means an arrangement by which
5 employees of a licensee are assigned to work at a client company and
6 in which employment responsibilities are in fact shared by the licensee
7 and the client company in accordance with G.S. 58-89-100, the
8 employee's assignment is intended to be of a long-term or continuing
9 nature, rather than temporary or seasonal in nature, and a majority of
10 the workforce at a client company work site or a majority of the
11 personnel of a specialized group within that workforce consists of
12 assigned employees of the licensee. "Employee leasing services" does
13 not include services that provide temporary employees or independent
14 contractors, personnel placement services, managed services, payroll
15 services that do not involve employee staffing or leasing, or similar
16 groups that do not meet the requirements of this subdivision.
- 17 (6) "GAAP financial statement" has the same meaning as in G.S.
18 58-47-60(7).
- 19 (7) "Hazardous financial condition" has the same meaning as in G.S.
20 58-47-60(9).
- 21 (8) "Licensee" means a person licensed under this Article to provide
22 employee leasing services. The term includes a professional employer
23 organization group licensed under G.S. 58-89-35.
- 24 (9) "Managed services" means services provided by an organization that is
25 the sole employer of employees whom it supplies to staff and manage
26 a specific portion of a company's workforce or a specific facility
27 within a company on an ongoing basis. The managed services
28 organization has responsibility for ensuring the capabilities and skills
29 of the employees it supplies or provides, for all employer functions, for
30 supervisory responsibility over the employees, and for management
31 accountability of the facility or function.
- 32 (10) "Person" has the same meaning as in G.S. 58-1-5(9).
- 33 (11) "Personnel placement service" means a service that offers job
34 placement services in which the personnel placement service
35 organization assists persons interested in finding a job with companies
36 that are seeking employees. Companies that hire persons through a
37 personnel placement service are the sole employers of the persons
38 hired, and the personnel placement service does not have any
39 responsibility as an employer.
- 40 (12) "Professional employer organization" means a person that offers
41 employee leasing services and includes "staff leasing services
42 companies", "employee leasing companies", "staff leasing companies",
43 and "administrative employers" who offer or propose to offer
44 employee leasing services in this State.

1 (13) "Professional employer organization group" means a combination of
2 professional employer organizations that operates under a group
3 license issued under this Article.

4 (14) "Temporary employees" means persons employed under an
5 arrangement by which an organization hires its own employees and
6 assigns them to a client company to support or supplement the client's
7 workforce in a special work situation, including:

8 a. An employee absence;

9 b. A temporary skill shortage;

10 c. A seasonal workload; or

11 d. A special assignment or project.

12 **"§ 58-89-10. North Carolina Professional Employer Organization Advisory**
13 **Council.**

14 (a) There is created the North Carolina Professional Employer Organization
15 Advisory Council to advise, consult with, and make recommendations to the
16 Commissioner on the regulation of professional employer organizations, as requested by
17 the Commissioner. The Council shall consist of eight members as follows:

18 (1) The Commissioner of Insurance or the Commissioner's designee, ex
19 officio.

20 (2) The Commissioner of Labor or the Commissioner's designee, ex
21 officio.

22 (3) The Chair of the North Carolina Industrial Commission or the Chair's
23 designee, ex officio.

24 (4) Two members appointed by the Governor, from a list of five persons
25 recommended by the North Carolina Industrial Commission.

26 (5) One member appointed by the Governor who is not involved directly
27 or indirectly with the employee leasing services industry.

28 (6) One member of the General Assembly, appointed by the General
29 Assembly in accordance with G.S. 120-121, upon the recommendation
30 of the President Pro Tempore of the Senate.

31 (7) One member of the General Assembly, appointed by the General
32 Assembly in accordance with G.S. 120-121, upon the recommendation
33 of the Speaker of the House of Representatives.

34 Initial terms begin January 1, 2004.

35 (b) Other than the initial members of the Council, members of the Council shall
36 serve three-year terms. Initial members of the Council shall serve staggered terms as
37 follows:

38 (1) One member appointed by the Governor from the list recommended by
39 the North Carolina Industrial Commission and the member appointed
40 by the General Assembly upon the recommendation of the President
41 Pro Tempore of the Senate shall serve terms of three years.

42 (2) One member appointed by the Governor from the list recommended by
43 the North Carolina Industrial Commission and the member appointed

1 by the General Assembly upon the recommendation of the Speaker of
2 the House of Representatives shall serve terms of two years.

3 (3) The member appointed by the Governor who is not directly or
4 indirectly involved in the employee leasing services industry shall
5 serve a term of one year.

6 (c) The Commissioner of Insurance shall serve as chair of the Council and shall
7 call all meetings of the Council.

8 (d) The Governor may remove any member of the Council appointed by the
9 Governor for misconduct, incompetence, or neglect of duty. The General Assembly may
10 remove any member appointed by it for the same reasons. The appointing authority
11 making the original appointment shall appoint successors.

12 (e) All vacancies occurring on the Council shall be filled, for the unexpired term,
13 by the appointing authority making the original appointment. Vacancies in
14 appointments made by the General Assembly shall be filled in accordance with G.S.
15 120-122.

16 (f) The Department of Insurance shall furnish the Council with meeting space
17 and clerical and other services required by the Council to conduct its business.

18 (g) If the Council determines that consultation with the employee leasing services
19 industry is necessary for the full and accurate deliberation of an issue, the Council shall
20 consult with representatives from the employee leasing services accordingly.

21 (h) The members of the Council shall not receive compensation or per diem for
22 their service on the Council.

23 **"§ 58-89-15. Rules.**

24 (a) The Commissioner may adopt rules necessary to implement, administer, and
25 enforce the provisions of this Article.

26 (b) Each licensee is subject to this Article and to the rules adopted by the
27 Commissioner.

28 (c) Nothing in this Article preempts the existing statutory or rule-making
29 authority of any other State agency or entity to regulate employee leasing services in a
30 manner consistent with the statutory authority of that State agency or entity.

31 **"§ 58-89-20. Interagency cooperation.**

32 A State agency, in performing duties under other law that affects the regulation of
33 employee leasing services, shall cooperate with the Commissioner as necessary to
34 implement, administer, and enforce this Article.

35 **"§ 58-89-25. Effect of other law on client companies and assigned employees.**

36 (a) This Article does not exempt a client company of a licensee, or any assigned
37 employee, from any other license requirements imposed under local, State, or federal
38 law.

39 (b) An employee who is licensed, registered, or certified under law and who is
40 assigned to a client company is considered to be an employee of the client company for
41 the purpose of that license, registration, or certification.

42 (c) A licensee is not engaged in the unauthorized practice of an occupation, trade,
43 or profession that is licensed, certified, or otherwise regulated by a State agency or other

1 political subdivision of the State, including a county or city, by entering into an
2 employee leasing services agreement with a client company and assigned employees.

3 (d) With respect to a bid, contract, purchase order, program, or agreement entered
4 into with the State or a political subdivision of the State, or State program or benefit
5 otherwise available to a client company, a client company's status, certification, or
6 qualification pursuant to the bid, contract, benefit, program, agreement, or State
7 program shall not be affected because the client company has entered into an agreement
8 with a licensee or utilizes the services of a licensee.

9 (e) Nothing in this Article or in any employee leasing services contract shall
10 affect, modify, or amend any collective bargaining agreement or the rights or
11 obligations of any client company, professional employer organization, or any assigned
12 employee under the National Labor Relations Act, 29 U.S.C. § 151, et seq.

13 **"§ 58-89-30. Other provisions of this Chapter.**

14 G.S. 58-2-45, 58-2-50, 58-2-55, 58-2-60, 58-2-65, 58-2-69, 58-2-70, 58-2-75,
15 58-2-100, 58-2-155, 58-2-163, 58-2-180, 58-2-185, 58-2-200, and 58-3-100 shall apply
16 to persons licensed under this Article.

17 "Part 2. License Requirements and Limitations.

18 **"§ 58-89-35. License required; professional employer organization groups.**

19 (a) No person shall engage in or offer employee leasing services in this State
20 unless the person holds a license issued under this Article.

21 (b) Two or more professional employer organizations that are controlled by the
22 same ultimate parent, entity, or persons may be licensed as a professional employer
23 organization group. A professional employer organization group may satisfy the
24 reporting and financial requirements of this Article on a consolidated basis. As a
25 condition of licensure as a professional employer organization group, each professional
26 employer organization that is a member of the group shall guarantee payment of all
27 financial obligations of every other member.

28 **"§ 58-89-40. General license requirements.**

29 (a) To be qualified to serve as an officer or controlling person of a licensee under
30 this Article, the officer or controlling person shall be at least 18 years of age, be of good
31 moral character, and have educational, managerial, or business experience relevant to:

32 (1) Operation of a professional employer organization; or

33 (2) Service as an officer or controlling person of a professional employer
34 organization.

35 (b) As used in this section, "good moral character" means a personal history of
36 honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the
37 rights of others and for State and federal laws.

38 **"§ 58-89-45. Background investigations.**

39 (a) Before a license is issued to an applicant, each applicant shall furnish the
40 Commissioner a complete set of fingerprints and a recent passport-size, full-face
41 photograph of each officer and controlling person. Each officer's and controlling
42 person's fingerprints shall be certified by an authorized law enforcement officer. The
43 fingerprints of every officer and controlling person shall be forwarded to the State
44 Bureau of Investigation for a search of the officer's and controlling person's criminal

1 history record file, if any. If warranted, the State Bureau of Investigation shall forward a
2 set of the fingerprints to the Federal Bureau of Investigation for a national criminal
3 history record check. An applicant shall pay the cost of the State and any national
4 criminal history check of the officers and controlling persons.

5 (b) The Commissioner may deny the initial license of an applicant under this
6 Article if, after notice to the applicant and an opportunity for a hearing, the
7 Commissioner finds that an officer or controlling person has:

8 (1) Made any untrue material statement regarding the background or
9 experience of any officer or controlling person;

10 (2) Violated, or failed to comply with, any employee leasing services law
11 or any rule or order of the Commissioner or of any other State official
12 responsible for the regulation of employee leasing services;

13 (3) Obtained or attempted to obtain the license through misrepresentation
14 or fraud;

15 (4) Been convicted of a felony;

16 (5) Been found to have committed any unfair trade practice or fraud;

17 (6) Used fraudulent, coercive, or dishonest practices, or acted in a manner
18 that is incompetent, untrustworthy, or financially irresponsible; or

19 (7) Held such a position in another professional employer organization
20 that has had its license or registration suspended, terminated, or
21 revoked by any state.

22 (c) This section also applies to a change in a controlling party of a professional
23 employer organization.

24 (d) For purposes of investigation under this section, the Commissioner shall have
25 all the power conferred by G.S. 58-2-50 and other applicable provisions of this Chapter.

26 **"§ 58-89-50. Surety bond.**

27 (a) An applicant shall acquire and maintain a surety bond for the benefit of the
28 Commissioner in an amount determined by the Commissioner. The surety bond required
29 by this section shall be in an amount equal to at least (i) five percent (5%) of the
30 applicant's total North Carolina wages, benefits, workers' compensation premiums, and
31 unemployment compensation contributions for the prior year or (ii) one hundred
32 thousand dollars (\$100,000), whichever is greater. A copy of the executed bond shall be
33 filed with the Commissioner before licensure.

34 (b) The surety bond required by this section shall be in a form prescribed by the
35 Commissioner and issued by an insurer authorized by the Commissioner to write surety
36 business in this State.

37 (c) The surety bond required by this section may be exchanged or replaced with
38 another surety bond that meets the requirements of this section if 90 days' advance
39 written notice is provided to the Commissioner.

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

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

1 (f) In lieu of the surety bond required by this section, an applicant may maintain
2 on deposit with the Commissioner an amount equal to the amount required under
3 subsection (a) of this section in cash or in value of securities of the kind specified in
4 G.S. 58-5-20 and subject to the same conditions as the surety bond.

5 **"§ 58-89-55. Financial responsibility.**

6 (a) For purposes of this section, "financial responsibility" means the current and
7 expected future condition of financial solvency sufficient to support a reasonable
8 expectation that an applicant or licensee can successfully conduct its business without
9 jeopardizing the interests of its assigned employees, client companies, or the public.

10 (b) Evidence of financial responsibility shall include a certified audited GAAP
11 financial statement, prepared as of a date not more than 90 days before the date of
12 application or filing, that demonstrates that the applicant or licensee is not in a
13 hazardous financial condition.

14 (c) In order to be in compliance with this section, each licensee may be required
15 to file with the Commissioner, no later than 45 days after the end of the fiscal year:

- 16 (1) An annual GAAP financial statement, prepared in a format similar to
17 the annual certified audited financial statement; and
- 18 (2) An attestation, executed by the chief financial officer, the chief
19 executive officer, and a controlling person of the licensee, that the
20 licensee has paid all of its obligations for payroll, payroll-related taxes,
21 workers' compensation insurance, and employee benefits.

22 **"§ 58-89-60. License application.**

23 (a) An applicant for an initial professional employer organization license shall
24 file with the Commissioner the information required by subsection (b) of this section on
25 a form prescribed by the Commissioner accompanied by the application fee. No
26 application is complete until the Commissioner has received all required information.

27 (b) The initial license application shall, at a minimum, be comprised of all of the
28 following information:

- 29 (1) The name, organizational structure, and date of organization of the
30 applicant, the addresses of the principal office and of all offices in this
31 State, the name of the contact person, the type of operations within this
32 State, and the taxpayer or employer identification number.
- 33 (2) A list by jurisdiction of each name under which the applicant has
34 operated in the preceding five years, including any alternative names,
35 names of predecessors, and, if known, successor business entities. The
36 list required by this subdivision shall include the parent company name
37 and any trade name, trademark, or service mark of the applicant.
- 38 (3) A list of all officers and controlling persons of the applicant, their
39 biographical information, including their management background,
40 and an affidavit from each attesting to his or her good moral character
41 and management competence.
- 42 (4) The location of the business records of the applicant.
- 43 (5) Evidence of financial responsibility in accordance with G.S. 58-89-55.

1 (6) Evidence that the applicant has paid all of its obligations for payroll,
2 payroll-related taxes, workers' compensation insurance, and employee
3 benefits. All disputed amounts shall be disclosed in the application.

4 (7) Any other information the Commissioner deems necessary and
5 requires by rule to establish that the applicant and the officers and
6 controlling persons are of good moral character, business integrity, and
7 financial responsibility.

8 (c) An application for licensure of a professional employer organization group
9 shall contain the information required by this section for each member of the group.

10 (d) Prior to the issuance of a license, an applicant must provide evidence to the
11 Commissioner that the applicant has acquired a surety bond, in accordance with G.S.
12 58-89-50, to secure the performance of the applicant's obligations pursuant to this
13 Article.

14 (e) If the Commissioner finds that the applicant has not fully met the
15 requirements for licensure, the Commissioner shall refuse to issue the license and shall
16 notify the applicant in writing of the denial, stating the grounds for the denial. The
17 application may also be denied for any reason for which a license may be suspended or
18 terminated under G.S. 58-89-155. Within 30 days after service of the notification, the
19 applicant may make a written demand upon the Commissioner for a review to determine
20 the reasonableness of the Commissioner's action. The review shall be completed
21 without undue delay, and the applicant shall be notified promptly in writing as to the
22 outcome of the review. Within 30 days after service of the notification as to the
23 outcome, the applicant may make a written demand upon the Commissioner for a
24 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant
25 disagrees with the outcome.

26 (f) Removal, demotion, or discharge of an officer or a controlling person in
27 response to an order of the Commissioner of the alleged unsuitability of that officer or
28 controlling person is an affirmative defense to any claim by that individual based on the
29 removal, demotion, or discharge.

30 (g) An officer or controlling person who has been evaluated by the
31 Commissioner under this Article is not required to be reevaluated if that person changes
32 the person's affiliation or employment from one applicant or licensee to another
33 applicant or licensee.

34 (h) After denial, suspension, or termination of a license, and before issuing a new
35 license or reinstating a license, the Commissioner shall review and consider:

36 (1) The extent to which the applicant or licensee has adequately corrected
37 any problems; and

38 (2) Whether the applicant or licensee has demonstrated that the applicant
39 or licensee had exercised due diligence to avoid the reason or reasons
40 for the denial or termination.

41 The applicant or licensee bears the burden of proof with respect to subdivisions (1)
42 and (2) of this subsection.

43 "§ 58-89-65. Fees.

1 (a) Each applicant for an initial or limited professional employer organization
2 license shall pay to the Commissioner, before the issuance of the license, a
3 nonrefundable application fee of one thousand dollars (\$1,000).

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

6 (c) When the Commissioner finds that a licensee has committed an act that is a
7 ground for disciplinary violation under G.S. 58-89-155 or that a licensee has committed
8 a prohibited act in violation of G.S. 58-89-170, the Commissioner may charge an
9 applicant or licensee reasonable fees to recover the Department's costs associated with
10 investigations, inspections, examinations, and any other administrative or enforcement
11 responsibilities created under this Article.

12 (d) Fees collected by the Commissioner under this Article shall be deposited in
13 the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this
14 Article.

15 **"§ 58-89-70. License issuance; limitations; term.**

16 (a) The Commissioner shall issue a license to an applicant whom the
17 Commissioner determines has satisfied the requirements of this Article. The
18 Commissioner shall notify an applicant of any deficiency in the application not later
19 than the 30th day after the date on which the Commissioner receives the application.
20 The Commissioner shall issue the license not later than the 90th day after the date on
21 which the completed application is filed with the Commissioner.

22 (b) A license issued by the Commissioner under this Article shall remain in effect
23 until terminated or surrendered.

24 (c) Within 90 days after the end of each fiscal year, each licensee shall file with
25 the Commissioner all of the following information:

26 (1) A certified audited GAAP financial statement, as required by G.S.
27 58-89-55.

28 (2) Any information required by G.S. 58-89-60(b)(1), (2), (3), or (4) for
29 which there has been a change since the last or initial filing. Any
30 change of officers may subject the licensee to a background
31 investigation of those officers as required by G.S. 58-89-45.

32 (3) Information required by G.S. 58-89-60(b)(6).

33 (4) The annual filing fee.

34 (5) Any other information the Commissioner determines is needed for the
35 review of a licensee.

36 (d) By obtaining licensure under this Article, the controlling persons of a licensee
37 certify, under penalty of law, their compliance with the requirements of licensure and of
38 operation as a professional employer organization pursuant to this Article.

39 **"§ 58-89-75. Limited license.**

40 (a) The Commissioner by rule shall provide for the issuance of a limited license
41 to a person who seeks to offer limited employee leasing services in this State and is
42 domiciled in another state and licensed or registered as a professional employer
43 organization in that state.

1 (b) For purposes of this section, a professional employer organization is
2 considered to be offering limited employee leasing services if the professional employer
3 organization does all of the following:

4 (1) Employs fewer than 50 assigned employees in this State at any one
5 time.

6 (2) Does not provide assigned employees to a client company based or
7 domiciled in this State.

8 (3) Does not maintain an office in this State or solicit client companies
9 located or domiciled in this State.

10 (c) A professional employer organization that offers limited employee leasing
11 services shall complete the application forms and pay the fees for a limited license as
12 prescribed by the Commissioner.

13 (d) The Commissioner may use information obtained from regulatory agencies in
14 other states in evaluating an applicant for a limited license.

15 **"§ 58-89-80. License not assignable; change of name or location.**

16 (a) A licensee shall not conduct business under any name other than that
17 specified in the license. A license issued under this Article is not assignable. A licensee
18 shall not conduct business under any fictitious or assumed name without prior written
19 authorization from the Commissioner. The Commissioner shall not authorize the use of
20 a name that is so similar to that of a public office or agency or to that of another licensee
21 that the public may be confused or misled by the name's use. A licensee shall not
22 conduct business under more than one name unless the licensee has obtained a separate
23 license for each name.

24 (b) Except as provided in this subsection, a licensee may change the licensee's
25 licensed name only once in a calendar year by notifying the Commissioner and paying a
26 fee for the change of name. The fee for a name change shall be fifty dollars (\$50.00). A
27 licensee may change the licensee's name without the payment of the name change fee if
28 the name change is submitted with the information required by G.S. 58-89-70(c). If a
29 licensee has changed its name once during a calendar year, the licensee shall not change
30 its name again unless the name change is approved by the Commissioner.

31 (c) A licensee shall notify the Commissioner in writing within 30 days after any
32 change in the status of the licensee, including:

33 (1) Any change in the location of the licensee's primary business office;

34 (2) The addition of more business offices; or

35 (3) A change in the location of business records maintained by the
36 licensee.

37 (d) A licensee may amend the name specified in its license to add a trade name,
38 trademark, service mark, or parent company name. An amendment made under this
39 subsection shall comply with the requirements imposed under subsection (a) of this
40 section. The Commissioner shall charge a fee of fifty dollars (\$50.00) for processing the
41 amendment.

42 (e) A licensee offering employee leasing services in more than one state may
43 advertise in this State using the name of its parent company or under a trade name,
44 trademark, or service mark. The trade name, trademark, service mark, or parent

1 company name shall be listed on the license in addition to the licensed name used by the
2 licensee in this State.

3 (f) Each written proposal provided to a prospective client company and each
4 contract between a licensee and a client company or assigned employee shall clearly
5 identify the name of the licensee. A proposal or contract may also identify the trade
6 name, trademark, service mark, or parent company name of the licensee. A licensee
7 may use written materials including forms, benefit information, letterhead, and business
8 cards that bear only the trade name, trademark, service mark, or parent company name
9 of the licensee.

10 **"§ 58-89-85. Supervision, rehabilitation, and liquidation.**

11 If at any time the Commissioner determines, after notice and an opportunity for the
12 licensee to be heard, that a licensee (i) has been or will be unable, in such a manner as
13 may endanger the ability of the licensee, to fully perform its obligations pursuant to this
14 Article; or (ii) is bankrupt or in a hazardous financial condition, the Commissioner may
15 either (i) commence a supervision proceeding pursuant to Article 30 of this Chapter or
16 (ii) apply to the Superior Court of Wake County or to the federal bankruptcy court that
17 has previously taken jurisdiction over the licensee, if applicable, for an order directing
18 the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a
19 licensee in accordance with Article 30 of this Chapter.

20 "Part 3. Acquisitions and Mergers.

21 **"§ 58-89-90. Acquisition of control of or merger with professional employer**
22 **organization.**

23 (a) No person other than the issuer shall make a tender offer for or a request or
24 invitation for tenders of, or enter into an agreement to exchange securities, or seek to
25 acquire, or acquire, in the open market or otherwise, any voting security of a
26 professional employer organization domiciled in this State if, after the consummation
27 thereof, the person would, directly or indirectly (or by conversion or by exercise of any
28 right to acquire), be in control of the professional employer organization or any person
29 controlling a professional employer organization unless the offer, request, invitation,
30 agreement, or acquisition is approved by the Commissioner under this section. No such
31 merger or other acquisition of control is effective until the Commissioner approves of
32 the merger or acquisition under this section. The statement containing the information
33 required by this section shall also be filed with the professional employer organization
34 when it is filed with the Commissioner.

35 (b) For the purposes of this section, a "professional employer organization"
36 includes any person controlling a professional employer organization. Further, for the
37 purposes of this section, "person" does not include any securities broker holding, in the
38 usual and customary broker's function, less than twenty percent (20%) of the voting
39 securities of a professional employer organization or of any person that controls a
40 professional employer organization.

41 (c) Any acquisition of control of a professional employer organization shall be
42 completed not later than 90 days after the date of the Commissioner's order approving
43 the acquisition under this section, unless the Commissioner grants an extension in
44 writing on a showing of good cause for the delay.

1 (d) If the deadlines for completion in subsection (c) of this section are not met,
2 the person seeking to acquire control of the professional employer organization shall
3 resubmit the statement required by subsection (e) of this section, and the Commissioner
4 may reconsider approval of acquisition of control under this section.

5 (e) The statement to be filed with the Commissioner under subsection (a) of this
6 section shall be made under oath or affirmation and shall include all information
7 required by the Commissioner pursuant to rules adopted by the Commissioner.

8 (f) The Commissioner shall approve any merger or other acquisition of control
9 referred to in subsection (a) of this section unless, after a public hearing thereon, the
10 Commissioner finds any of the following:

11 (1) After the change in control, the professional employer organization
12 referred to in subsection (a) of this section would not be able to satisfy
13 the requirements for the issuance of a professional employer
14 organization license.

15 (2) The financial condition of any acquiring party might jeopardize the
16 financial stability of the professional employer organization or
17 prejudice the interest of its client companies or assigned employees.

18 (3) The competence, experience, and integrity of those persons who would
19 control the operation of the professional employer organization are
20 such that it would not be in the interests of the professional employer
21 organization's client companies, assigned employees, and of the public
22 to permit the merger or acquisition of control.

23 (4) The acquisition is likely to be hazardous or prejudicial to members of
24 the public who enter into arrangements with professional employer
25 organizations.

26 (g) The public hearing referred to in subsection (f) of this section shall be held
27 within 120 days after the statement required by subsection (a) of this section is filed,
28 and the Commissioner shall give at least 30 days' notice of the hearing to the person
29 filing the statement, to the professional employer organization, and to any other persons
30 designated by the Commissioner. The Commissioner shall make a determination as
31 expeditiously as is reasonably practicable after the conclusion of the hearing. At the
32 hearing, the person filing the statement, the professional employer organization, any
33 person to whom notice of hearing was sent, and any other person whose interest may be
34 affected by the hearing may present evidence, examine and cross-examine witnesses,
35 and offer oral or written arguments; and in connection therewith may conduct discovery
36 proceedings at any time after the statement is filed with the Commissioner under this
37 section and in the same manner as is presently allowed in the superior courts of this
38 State. In connection with discovery proceedings authorized by this section, the
39 Commissioner may issue such protective orders and other orders governing the timing
40 and scheduling of discovery proceedings as might otherwise have been issued by a
41 superior court of this State in connection with a civil proceeding. If any party fails to
42 make reasonable and adequate response to discovery on a timely basis or fails to comply
43 with any order of the Commissioner with respect to discovery, the Commissioner on the
44 Commissioner's own motion or on motion of any other party or person may order that

1 the hearing be postponed, recessed, convened, or reconvened, as the case may be,
2 following proper completion of discovery and reasonable notice to the person filing the
3 statement, to the professional employer organization, and to any other persons
4 designated by the Commissioner.

5 (h) The Commissioner may retain, at the acquiring person's expense, any
6 attorneys, economists, accountants, or other experts not otherwise a part of the
7 Commissioner's staff as may be reasonably necessary to assist the Commissioner in
8 reviewing the proposed acquisition of control.

9 (i) The expenses of mailing any notices and other materials required by this
10 section shall be borne by the person making the filing. As security for the payment of
11 such expenses, the person shall file with the Commissioner an acceptable bond or other
12 deposit in an amount to be determined by the Commissioner.

13 (j) The provisions of this section do not apply to any offer, request, invitation,
14 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not
15 having been made or entered into for the purpose and not having the effect of changing
16 or influencing the control of a professional employer organization, or (ii) as otherwise
17 not contemplated within the purposes of this section.

18 (k) The following are violations of this section:

19 (1) The failure to file any statement, amendment, or other material
20 required to be filed pursuant to subsection (a) or (e) of this section.

21 (2) The effectuation or any attempt to effectuate an acquisition of control
22 of or merger with a professional employer organization, unless the
23 Commissioner has approved the acquisition or merger.

24 (l) The courts of this State are vested with jurisdiction over every person not a
25 resident of, or domiciled or authorized to do business in, this State who files a statement
26 with the Commissioner under this section; and each such person is deemed to have
27 performed acts equivalent to and constituting an appointment by that person of the
28 Commissioner to be that person's true and lawful attorney upon whom may be served all
29 legal process in any action, suit, or proceeding arising out of violations of this section.
30 Copies of all such process shall be handled in accordance with the provisions of G.S.
31 58-16-30, 58-16-35, and 58-16-45.

32 (m) Any professional employer organization that is domiciled in another state,
33 and subject to licensure or registration in such state and subject to substantially similar
34 requirements, shall be exempt from the requirements of subsection (a) of this section
35 and shall file the information required by rules adopted by the Commissioner under
36 subsection (n) of this section.

37 (n) The Commissioner shall adopt by rule the information to be filed with the
38 Commissioner for any acquisition of control of or merger with a foreign professional
39 employer organization. For the purposes of this section, "foreign professional employer
40 organization" means a person incorporated or organized under the laws of the United
41 States or of any jurisdiction within the United States other than this State.

42 "Part 4. Licensee Duties and Responsibilities.

43 "§ 58-89-95. Agreement; notice.

1 (a) A licensee shall establish the terms of an employee leasing services
2 agreement by a written contract between the licensee and the client company.

3 (b) The licensee shall give written notice of the agreement, by agreement or
4 otherwise, as it affects assigned employees to each employee assigned to a client
5 company work site. This written notice shall be given to each assigned employee not
6 later than the first payday after the date on which that individual becomes an assigned
7 employee.

8 (c) The licensee shall give written notice to each employee when the employee
9 leasing services agreement is amended or otherwise changes if the change affects the
10 assigned employees. In particular, the licensee shall give each employee written notice
11 when the employee ceases to be an employee of the licensee.

12 **"§ 58-89-100. Contract requirements.**

13 A contract between a licensee and a client company shall provide that the licensee:

14 (1) Reserves a right of direction and control over employees assigned to a
15 client company's work sites. However, a client company may retain
16 such sufficient direction and control over the assigned employees as is
17 necessary to conduct the client company's business and without which
18 the client company would be unable to conduct its business, to
19 discharge any fiduciary responsibility that it may have, or to comply
20 with any applicable licensure, regulatory, or statutory requirement of
21 the client company.

22 (2) Assumes responsibility for the payment of wages to the assigned
23 employees.

24 (3) Assumes responsibility for the payment of payroll taxes and collection
25 of taxes from payroll on assigned employees.

26 (4) Retains a right to hire, fire, discipline, and reassign the assigned
27 employees. However, the client company may accept or cancel the
28 assignment of any assigned employee.

29 (5) Retains the right of direction and control over the adoption of
30 employment policies and the management of workers' compensation
31 claims, claim filings, and related procedures in accordance with
32 applicable federal laws and the laws of this State.

33 **"§ 58-89-105. Employee benefit plans; required disclosure; other reports.**

34 (a) A licensee may sponsor and maintain employee benefit plans for the benefit
35 of assigned employees. A client company may include assigned employees in any
36 benefit plan sponsored by the client company.

37 (b) A licensee shall not sponsor a plan of self-insurance for health benefits except
38 as permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. §
39 1001, et seq.).

40 (c) For purposes of this section, a "plan of self-insurance" includes any
41 arrangement except an arrangement under which an insurance company licensed to
42 write insurance in this State has issued an insurance policy that covers all of the
43 obligations of the health benefits plan.

1 "§ 58-89-110. Workers' compensation insurance; exclusivity and vicarious
2 liability.

3 (a) A licensee shall be responsible for providing workers' compensation
4 insurance coverage through a licensed insurance carrier or a licensed self-insurance plan
5 for the licensee's assigned employees as provided in Chapter 97 of the General Statutes,
6 the Workers' Compensation Act. Workers' compensation coverage shall be obtained on
7 a multiple coordinated policy basis as follows:

8 (1) Each client company shall have its own policy covering its assigned
9 employees required to be covered pursuant to the laws of this State.

10 (2) All assigned risk policies for client companies of the same licensee
11 shall be assigned to one workers' compensation carrier in the State and
12 in other states to the extent possible.

13 (3) If a client company leases employees from more than one licensee,
14 there shall be a separate policy for the assigned employees of each
15 licensee.

16 (4) The workers' compensation carrier also shall issue a policy covering
17 the internal employees of the licensee unless they are otherwise
18 covered.

19 A license shall not be issued to any professional employer organization unless the
20 organization first files with the Commissioner evidence of workers' compensation
21 coverage for all assigned employees in this State, including those leased from or
22 coemployed with another person, and that the premium paid by the licensee is
23 commensurate with exposure and anticipated claim experience for all employees.

24 (b) If a licensee maintains workers' compensation insurance, the licensee shall
25 pay workers' compensation insurance premiums based on the experience rating of the
26 client company for the first two years the client company has a contract with the
27 licensee and as further provided by rule by the Commissioner.

28 (c) Each licensee shall maintain and make available to its workers' compensation
29 carrier on an annual basis the following information:

30 (1) The correct name and federal identification number of each client
31 company.

32 (2) A listing of all covered employees provided to each client company,
33 by classification code.

34 (3) The total eligible wages, by classification code, and the premiums due
35 to the carrier for the employees provided to each client company.

36 (4) Sufficient information to permit the calculation of an experience
37 modification factor for each client company upon termination of the
38 employee leasing relationship. Information accruing during the term of
39 the leasing arrangement that is used to calculate an experience
40 modification factor for a client company upon termination of the
41 leasing relationship shall continue to be used in the future experience
42 ratings of the licensee.

43 (d) Every official North Carolina Industrial Commission form or other document
44 filed with the North Carolina Industrial Commission shall identify by name and address

1 both the licensee and the client company employing the employee who is the subject of
2 the document.

3 (e) A licensee shall, within 10 days of initiation or termination of the licensee's
4 relationship with any client company, notify its workers' compensation carrier, the
5 Commissioner, and the North Carolina Industrial Commission of both the initiation and
6 termination of the relationship. If the client company terminates the relationship
7 between the licensee and the client company, the notice required by this subsection shall
8 be given within 10 days of the licensee's actual knowledge of the termination.

9 (f) If the employee leasing services arrangement with a client company is
10 terminated, the client company shall be assigned an experience modification factor that
11 reflects its experience during the experience period specified by the approved
12 experience rating plan, including, if applicable, experience incurred for assigned
13 employees under the employee leasing services agreement. The licensee shall notify its
14 insurer of its intent to terminate any contractual relationship prior to termination when
15 feasible. When prior notice is not feasible, the licensee shall notify its insurer within 10
16 days following actual termination.

17 (g) A client company shall not enter into an employee leasing services agreement
18 or be eligible for workers' compensation coverage in the voluntary market if the client-
19 workers' company owes its current or prior carrier any premium for workers'
20 compensation insurance, or if the client company owes its current or prior professional
21 employer organization amounts due under the employee leasing services agreement,
22 except for premiums or amounts due that are subject to dispute. For the purposes of this
23 section and compliance with other laws and rules, a licensee may rely on a sworn
24 statement by the client company that the client company has met any and all prior
25 premium or fee obligations, unless the licensee has actual knowledge to the contrary.

26 (h) Subject to any contrary provisions of the contract between the licensee and
27 the client company, the employee leasing services agreement that exists between the
28 licensee and client company shall be interpreted for purposes of insurance, bonding, and
29 employer's liability as follows:

30 (1) The licensee shall be entitled along with the client company to the
31 exclusivity of the remedy under both the workers' compensation and
32 employers' liability provision of the workers' compensation policy or
33 plan that either party has secured.

34 (2) A licensee is not liable for the acts, errors, or omissions of a client
35 company or of any assigned employee acting under the sole and
36 exclusive direction and control of the client company. A client
37 company is not liable for the acts, errors, or omissions of a licensee or
38 of any employee of a licensee acting under the sole and exclusive
39 direction or control of the licensee. Nothing in this section limits any
40 contractual liability between a licensee and the client company or
41 limits any liability or responsibility under this Article.

42 (3) Employees assigned to a client company by a licensee are the
43 employees of the client company for the purposes of general liability
44 insurance, automobile insurance, fidelity bonds, surety bonds, and

1 liquor liability insurance carried by the client company unless the
2 employees are included by specific reference in the applicable
3 employment arrangement contract, insurance contract, or bond.

4 **"§ 58-89-115. Benefit plan and workers' compensation notice.**

5 (a) With respect to any insurance or benefit plan provided by a licensee for the
6 benefit of its assigned employees, a licensee shall disclose all of the following
7 information to the Commissioner, each client company, and its assigned employees:

8 (1) The type of coverage.

9 (2) The identity of each insurer for each type of coverage.

10 (3) The amount of benefits provided for each type of coverage and to
11 whom or in whose behalf benefits are to be paid.

12 (4) The policy limits on each insurance policy.

13 (5) Whether the coverage is fully insured, partially insured, or fully
14 self-funded.

15 (b) The workers' compensation carrier shall arrange to have all notices sent to the
16 licensee and to have a single master invoice sent to the licensee.

17 (c) The licensee shall notify the client company and the Commissioner in writing
18 about a discontinuance of any health plan or workers' compensation insurance coverage
19 no later than 10 days after the discontinuance.

20 (d) The Commissioner by rule may require a licensee to file other reports that are
21 reasonably necessary for the administration and enforcement of this Article.

22 **"§ 58-89-120. Unemployment taxes; payroll.**

23 A licensee is the employer of an assigned employee for purposes of Chapters 95 and
24 96 of the General Statutes. The Employment Security Commission shall cooperate with
25 the Commissioner in the investigation of applicants and licensees and shall provide the
26 Commissioner with access to all relevant records and data in the custody of the
27 Employment Security Commission.

28 **"§ 58-89-125. Posting requirements.**

29 (a) Each licensee shall post the license issued under this Article in a conspicuous
30 place in the licensee's principal place of business in this State.

31 (b) Each licensee shall display, in a place that is in clear and unobstructed public
32 view, a notice stating that the business operated at the location is licensed and regulated
33 by the Commissioner and that any questions or complaints may be directed to the
34 Commissioner.

35 **"§ 58-89-130. Contractual duties.**

36 Each licensee is responsible for the licensee's contractual duties and responsibilities
37 to manage, maintain, collect, and make timely payments for all of the following:

38 (1) Insurance premiums.

39 (2) Benefit and welfare plans.

40 (3) Other employee withholding.

41 (4) Any other expressed responsibility within the scope of the contract for
42 fulfilling the duties imposed under this Article.

43 **"§ 58-89-135. Compliance with other laws.**

1 Each licensee shall comply with all appropriate State and federal laws relating to
2 reporting, sponsoring, filing, and maintaining benefit and welfare plans.

3 **"§ 58-89-140. Required information.**

4 Each licensee shall:

5 (1) Maintain adequate books and records regarding the licensee's duties
6 and responsibilities, including accounting and employment records
7 relating to all employee leasing services agreement activities, for a
8 minimum of three years.

9 (2) Maintain and make available at all times to the Commissioner the
10 following information, which shall be treated as proprietary and
11 confidential and is exempt from disclosure to persons other than other
12 governmental agencies having a reasonable, legitimate purpose for
13 obtaining the information:

14 a. The correct name, address, and telephone number of each client
15 company.

16 b. Each client company contract.

17 c. A listing of each client company by classification code as
18 described in the "Standard Industrial Classification Manual"
19 published by the United States Office of Management and
20 Budget.

21 **"§ 58-89-145. Examinations.**

22 (a) The Commissioner may conduct an examination of a licensee as often as the
23 Commissioner considers appropriate.

24 (b) An examination under this Article shall be conducted in accordance with the
25 examination law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

26 (c) In lieu of an examination of any foreign or alien person licensed under this
27 Article, the Commissioner may accept an examination report on the licensee prepared
28 by the appropriate regulator for the licensee's state of domicile.

29 (d) When making an examination under this Article, the Commissioner may
30 retain attorneys, appraisers, independent actuaries, independent certified public
31 accountants, or other professionals and specialists as examiners, the reasonable cost of
32 which shall be borne by the licensee that is the subject of the examination.

33 **"§ 58-89-150. Agent for service of process.**

34 Each resident licensee shall maintain a registered agent for the service of process in
35 this State. The Commissioner shall be each nonresident licensee's agent for service of
36 process as provided in Article 16 of this Chapter.

37 "Part 5. Penalties and Sanctions.

38 **"§ 58-89-155. Grounds for disciplinary action.**

39 (a) The Commissioner may take disciplinary action against a licensee on any of
40 the following grounds:

41 (1) Being convicted or having an officer or controlling person of the
42 licensee convicted of:

43 a. Bribery, fraud, or intentional or material misrepresentation in
44 obtaining or attempting to obtain a license;

- 1 **b.** A crime that relates to the operation of a professional employer
2 organization or the ability of the licensee or any officer or
3 controlling person of the licensee to operate a professional
4 employer organization;
5 **c.** A crime that relates to the classification, misclassification, or
6 underreporting of employees required by State law;
7 **d.** A crime that relates to the establishment or maintenance of a
8 self-insurance program, whether health insurance, workers'
9 compensation insurance, or other insurance;
10 **e.** A crime that relates to fraud, deceit, or misconduct in the
11 operation of an employee leasing service; or
12 **f.** A crime that involves dishonesty or breach of trust.

13 (2) Engaging in employee leasing services or offering to engage in the
14 provision of employee leasing services without a license.

15 (3) Failure to provide notice to the Commissioner and client company
16 within 10 days of the discontinuance of any insurance coverage
17 pursuant to G.S. 58-89-115.

18 (4) Failure to provide the notice required by G.S. 58-50-40.

19 (b) For purposes of this section, a conviction includes an adjudication of guilt, a
20 plea of guilty, and a plea of nolo contendere.

21 **§ 58-89-160. Sanctions.**

22 (a) On a finding that a ground for disciplinary action exists under G.S.
23 58-89-155, the Commissioner may suspend or terminate a license, impose a civil
24 penalty, and seek an order of restitution under G.S. 58-2-70.

25 (b) On termination of a license, the licensee shall immediately return the
26 terminated license to the Commissioner.

27 (c) Any disciplinary action taken, any temporary or permanent termination of a
28 license, or any determination that an officer or controlling person is unqualified shall be
29 made by the Commissioner subject to Article 3A of Chapter 150B of the General
30 Statutes.

31 **§ 58-89-165. Injunctions; civil remedies; cease and desist orders.**

32 (a) In addition to the penalties and other enforcement provisions of this Article, if
33 any person violates this Article or any rule implementing this Article, the Commissioner
34 may seek an injunction in a court of competent jurisdiction and may apply for
35 temporary and permanent orders that the Commissioner determines are necessary to
36 restrain the person from committing the violation.

37 (b) Any person damaged by the acts of a person in violation of this Article may
38 bring a civil action against the person committing the violation in a court of competent
39 jurisdiction.

40 (c) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and
41 desist order upon a person that violates any provision of this Article, any rule or order
42 adopted by the Commissioner, or any written agreement entered into with the
43 Commissioner. The cease and desist order may be subject to judicial review under G.S.
44 58-63-35.

1 (d) When the Commissioner finds that an activity in violation of this Article
2 presents an immediate danger to the public that requires an immediate final order, the
3 Commissioner may issue an emergency cease and desist order reciting with particularity
4 the facts underlying the findings. The emergency cease and desist order is effective
5 immediately upon service of a copy of the order on the respondent and remains effective
6 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,
7 the emergency cease and desist order remains effective, absent an order by a court of
8 competent jurisdiction in accordance with G.S. 58-63-35.

9 (e) In addition to the penalties and other enforcement provisions of this Article,
10 any person who violates this Article is subject to G.S. 58-2-70.

11 (f) The Commissioner is not required to post a bond for injunctive relief under
12 this section.

13 **"§ 58-89-170. Prohibited acts.**

14 No person shall do any of the following:

15 (1) Engage in or offer employee leasing services without holding a license
16 under this Article as a professional employer organization.

17 (2) Use the name or title "staff leasing company", "employee leasing
18 company", "licensed staff leasing company", "staff leasing services
19 company", "professional employer organization", or "administrative
20 employer" or otherwise represent that the person is licensed under this
21 Article unless the person holds a license issued under this Article.

22 (3) Represent as the person's own the license of another person or
23 represent that a person is licensed if the person does not hold a license.

24 (4) Give materially false or forged evidence to the Commissioner in
25 connection with obtaining a license or in connection with disciplinary
26 proceedings under this Article.

27 (5) Use or attempt to use a license that has been suspended or terminated.

28 **"§ 58-89-175. Criminal penalty.**

29 A person who violates G.S. 58-89-170 commits a Class H felony. Any officer or
30 controlling person who willfully violates any provision of this Article may be subject to
31 any and all criminal penalties available under State law."

32 **SECTION 2.** Article 4 of Chapter 114 of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 114-19.12. Criminal record checks of applicants for licensure as professional**
35 **employer organizations.**

36 The Department of Justice may provide to the North Carolina Department of
37 Insurance from the State and National Repositories of Criminal Histories the criminal
38 history of any applicant for licensure as a professional employer organization under
39 Article 89 of Chapter 58 of the General Statutes. Along with the request, the
40 Department shall provide to the Department of Justice the fingerprints of the applicant,
41 a form signed by the applicant consenting to the criminal record check and use of
42 fingerprints and other identifying information required by the State and National
43 Repositories, and any additional information required by the Department of Justice. The
44 applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a

1 search of the State's criminal history record file, and the State Bureau of Investigation
2 may forward a set of fingerprints to the Federal Bureau of Investigation for a national
3 criminal history record check. The Department of Insurance shall keep all information
4 obtained pursuant to this section confidential. The Department of Justice may charge a
5 fee to offset the cost incurred by it to conduct a criminal record check under this section.
6 The fee shall not exceed the actual cost of locating, editing, researching, and retrieving
7 the information."

8 **SECTION 3.** The Department of Insurance shall report to the 2005 General
9 Assembly on the implementation, administration, and enforcement of Article 89 of
10 Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the
11 Department shall recommend any statutory changes required to regulate professional
12 employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

13 **SECTION 4.** Each professional employer organization operating within this
14 State as of January 1, 2004, shall complete its initial licensing not later than 180 days
15 after January 1, 2004. Each professional employer organization not operating within
16 this State as of January 1, 2004, shall complete its initial licensing prior to
17 commencement of operations within this State.

18 **SECTION 5.** If any section or provision of this act is declared
19 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
20 validity of the act as a whole or any part other than the part so declared to be
21 unconstitutional, preempted, or otherwise invalid.

22 **SECTION 6.** This act becomes effective January 1, 2004, and applies to any
23 contracts entered into, any business conducted, and any actions taken on or after that
24 date, except that this act shall not become effective until funds have been appropriated
25 to implement the provisions of this act.