

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

S

2

SENATE BILL 20  
Finance Committee Substitute Adopted 7/10/03

Short Title: Regulate Professional Employer Organization.

(Public)

Sponsors:

Referred to:

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 or a group license  
16 under this Article.

17 (2) "Assigned employee" means an employee who is performing services  
18 for a client company under a contract between a licensee and a client  
19 company in which employment responsibilities are shared or allocated.  
20 "Assigned employee" does not include a temporary employee.  
21 Individuals who are directors, shareholders, partners, and managers of  
22 a client company are assigned employees to the extent the licensee and  
23 the client have agreed that those individuals are assigned employees  
24 and provided that those individuals meet the criteria of this subdivision  
25 and act as operational managers or perform reviews for the client  
26 company.

27 (3) "Audited GAAP financial statement" means a financial statement that  
28 is audited by an independent certified public accountant and presented  
29 in accordance with generally accepted accounting principles.

- 1           (4)    "Client company" means a person that contracts with a licensee and is  
2           assigned employees by the licensee under that contract.
- 3           (5)    "Control", including the terms "controlling", "controlled by", and  
4           "under common control with" means the direct or indirect possession  
5           of the power to direct or cause the direction of the management and  
6           policies of a person, whether through the ownership of voting  
7           securities, by contract other than a commercial contract for goods or  
8           nonmanagement services, or otherwise. Control is presumed to exist if  
9           any natural person directly or indirectly owns, controls, holds with the  
10           power to vote, or holds proxies representing ten percent (10%) or more  
11           of the voting securities of any other person. This presumption may be  
12           rebutted by a showing made in the manner provided by rule of the  
13           Commissioner. The Commissioner may determine, after furnishing all  
14           persons in interest notice and opportunity to be heard and making  
15           specific findings of fact to support such determination, that control  
16           exists in fact, notwithstanding the absence of a presumption to that  
17           effect.
- 18           (6)    "Financial responsibility" means the current and expected future  
19           condition of financial solvency sufficient to support a reasonable  
20           expectation that an applicant or licensee can successfully conduct its  
21           business without jeopardizing the interests of its assigned employees,  
22           client companies, or the public.
- 23           (7)    "Good moral character" means a personal history of honesty,  
24           trustworthiness, fairness, a good reputation for fair dealings, and  
25           respect for the rights of others and for State and federal laws.
- 26           (8)    "Hazardous financial condition" has the same meaning as in G.S.  
27           58-47-60(9).
- 28           (9)    "Licensee" means a person licensed under this Article to provide  
29           professional employer services. The term includes a professional  
30           employer organization group licensed under G.S. 58-89-35. Unless  
31           specifically stated otherwise in this Article, "licensee" includes persons  
32           who are licensed under this Article pursuant to alternative licensing  
33           procedures as set forth in G.S. 58-89-76.
- 34           (10)   "Managed services" means services provided by an organization that is  
35           the sole employer of employees whom it supplies to staff and manage  
36           a specific portion of a company's workforce or a specific facility  
37           within a company on an ongoing basis. The managed services  
38           organization has responsibility for ensuring the capabilities and skills  
39           of the employees it supplies or provides, for all employer functions, for  
40           supervisory responsibility over the employees, and for management  
41           accountability of the facility or function.
- 42           (11)   "PEO agreement" means a written contract by and between a client  
43           company and a professional employer organization that provides:

1           a.     For the allocation and sharing between the client company and  
2           the licensee of the responsibilities of employers with respect to  
3           the assigned employees, including hiring, firing, and  
4           disciplining of employees; and

5           b.     That the licensee and the client company assume the  
6           responsibilities required by this Article.

7           (12) "Person" has the same meaning as in G.S. 58-1-5(9).

8           (13) "Personnel placement service" means a service that offers job  
9           placement services in which the personnel placement service  
10          organization assists persons interested in finding a job with companies  
11          that are seeking employees. Companies that hire persons through a  
12          personnel placement service are the sole employers of the persons  
13          hired, and the personnel placement service does not have any  
14          responsibility as an employer.

15          (14) "Professional employer services" means an arrangement by which  
16          employees of a licensee are assigned to work at a client company and  
17          in which employment responsibilities are in fact shared by the licensee  
18          and the client company in accordance with G.S. 58-89-100, the  
19          employee's assignment is intended to be of a long-term or continuing  
20          nature, rather than temporary or seasonal in nature, and a majority of  
21          the workforce at a client company work site or a majority of the  
22          personnel of a specialized group within that workforce consists of  
23          assigned employees of the licensee. "Professional employer leasing  
24          services" does not include services that provide temporary employees  
25          or independent contractors, a personnel placement service, managed  
26          services, payroll services that do not involve employee staffing or  
27          leasing, the sharing of employees by commonly owned companies  
28          within the meaning of section 414(b) and (c) of the Internal Revenue  
29          Code of 1986, as amended, or similar groups that do not meet the  
30          requirements of this subdivision.

31          (15) "Professional employer organization" means a person that offers  
32          professional employer services and includes "staff leasing services  
33          companies", "employee leasing companies", "staff leasing companies",  
34          and "administrative employers" who offer or propose to offer  
35          professional employer services in this State.

36          (16) "Professional employer organization group" means a combination of  
37          professional employer organizations that operates under a group  
38          license issued under this Article.

39          (17) "Temporary employees" means persons employed under an  
40          arrangement by which an organization hires its own employees and  
41          assigns them to a client company to support or supplement the client's  
42          workforce in a special work situation, including:

43               a.     An employee absence;

44               b.     A temporary skill shortage;

1 c. A seasonal workload; or

2 d. A special assignment or project.

3 **"§ 58-89-10. North Carolina Professional Employer Organization Advisory**  
4 **Council.**

5 (a) There is created the North Carolina Professional Employer Organization  
6 Advisory Council to advise, consult with, and make recommendations to the  
7 Commissioner on the regulation of professional employer organizations, as requested by  
8 the Commissioner. The Council shall consist of 11 members as follows:

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

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

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

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

17 (5) Two members appointed by the Governor who are not involved  
18 directly or indirectly with the professional employer services industry.

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

22 (7) One member appointed by the General Assembly, upon the  
23 recommendation of the President Pro Tempore of the Senate, who is a  
24 representative of the professional employer services industry and who  
25 is involved with a professional employer organization that has 3,000 or  
26 more assigned employees.

27 (8) One member of the General Assembly, appointed by the General  
28 Assembly in accordance with G.S. 120-121, upon the recommendation  
29 of the Speaker of the House of Representatives.

30 (9) One member appointed by the General Assembly, upon the  
31 recommendation of the Speaker of the House of Representatives, who  
32 is a representative of the professional employer services industry and  
33 who is involved with a professional employer organization that has  
34 less than 3,000 assigned employees.

35 Initial terms begin January 1, 2004.

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

39 (1) The following initial members shall serve terms of three years:

40 a. One member appointed by the Governor from the list  
41 recommended by the North Carolina Industrial Commission.

42 b. The member of the General Assembly appointed by the General  
43 Assembly upon the recommendation of the President Pro  
44 Tempore of the Senate.

- 1           c.     One member appointed by the Governor who is not directly  
2                 involved with the professional employer services industry.  
3           d.     The member appointed by the General Assembly upon the  
4                 recommendation of the House of Representatives who is  
5                 involved with a professional employer organization.  
6       (2)   The following initial members shall serve terms of two years:  
7           a.     One member appointed by the Governor from the list  
8                 recommended by the North Carolina Industrial Commission.  
9           b.     The member of the General Assembly appointed by the General  
10                Assembly upon the recommendation of the Speaker of the  
11                House of Representatives.  
12           c.     One member appointed by the Governor who is not directly or  
13                 indirectly involved in the professional employer services  
14                 industry.  
15           d.     The member appointed by the General Assembly upon the  
16                 recommendation of the President Pro Tempore of the Senate  
17                 who is involved with a professional employer organization.

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

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

24       (e)   All vacancies occurring on the Council shall be filled, for the unexpired term,  
25         by the appointing authority making the original appointment. Vacancies in  
26         appointments made by the General Assembly shall be filled in accordance with G.S.  
27         120-122.

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

30       (g)   The members of the Council shall not receive compensation or per diem for  
31         their service on the Council.

32       **"§ 58-89-15. Rules.**

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

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

37       (c)   Nothing in this Article preempts the existing statutory or rule-making  
38         authority of any other State agency or entity to regulate professional employer services  
39         in a manner consistent with the statutory authority of that State agency or entity.

40       **"§ 58-89-20. Interagency cooperation.**

41       A State agency, in performing duties under other law that affects the regulation of  
42         professional employer services, shall cooperate with the Commissioner as necessary to  
43         implement, administer, and enforce this Article.

44       **"§ 58-89-25. Effect of other law on client companies and assigned employees.**

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

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

7       (c) A licensee is not engaged in the unauthorized practice of an occupation, trade,  
8 or profession that is licensed, certified, or otherwise regulated by a State agency or other  
9 political subdivision of the State, including a county or city, by entering into a PEO  
10 agreement with a client company and assigned employees.

11       (d) With respect to a bid, contract, purchase order, program, or agreement entered  
12 into with the State or a political subdivision of the State, or State program or benefit  
13 otherwise available to a client company, a client company's status, certification, or  
14 qualification pursuant to the bid, contract, benefit, program, agreement, or State  
15 program shall not be affected because the client company has entered into an agreement  
16 with a licensee or utilizes the services of a licensee.

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

21 **"§ 58-89-30. Other provisions of this Chapter.**

22 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,  
23 58-2-100, 58-2-155, 58-2-163, 58-2-180, 58-2-185, 58-2-200, and 58-3-100 shall apply  
24 to persons licensed under this Article.

25 "Part 2. License Requirements and Limitations.

26 **"§ 58-89-35. License required; professional employer organization groups.**

27       (a) No person shall engage in or offer professional employer services in this State  
28 unless the person holds a license issued under this Article.

29       (b) Two or more professional employer organizations that are controlled by the  
30 same ultimate parent, entity, or persons may be licensed as a professional employer  
31 organization group. A professional employer organization group may satisfy the  
32 reporting and financial requirements of this Article on a consolidated basis. As a  
33 condition of licensure as a professional employer organization group, each professional  
34 employer organization that is a member of the group shall guarantee payment of all  
35 financial obligations of every other member.

36 **"§ 58-89-40. Qualifications for controlling person.**

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

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

41               (2) Service as a controlling person of a professional employer  
42 organization.

1       (b) This section does not apply to persons who are licensed pursuant to the  
2 alternative licensing procedures set forth in G.S. 58-89-76 or to entities that are  
3 controlling persons.

4 **"§ 58-89-45. Reserved.**

5 **"§ 58-89-50. Surety bond; letter of credit.**

6       (a) An applicant for licensure shall acquire and maintain a surety bond for the  
7 benefit of the Commissioner in an amount of seventy-five thousand dollars (\$75,000).

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

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

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

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

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

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

27 **"§ 58-89-55. Reserved.**

28 **"§ 58-89-60. License application.**

29       (a) Every applicant for licensure shall file with the Commissioner, on a form  
30 prescribed by the Commissioner, the following information:

31           (1) The name, organizational structure, and date of organization of the  
32 applicant, the addresses of the principal office and of all offices in this  
33 State, the name of the contact person, the type of operations within this  
34 State, and the taxpayer or employer identification number.

35           (2) A list by jurisdiction of each name under which the applicant has  
36 operated in the preceding five years, including any alternative names,  
37 names of predecessors, and, if known, names of successor business  
38 entities. The list required by this subdivision shall include the parent  
39 company name and any trade name, trademark, or service mark of the  
40 applicant.

41           (3) A list of all officers and controlling persons of the applicant, their  
42 biographical information, including their management background,  
43 and an affidavit from each attesting to his or her good moral character  
44 and management competence.

1           (4)   The location of the business records of the applicant.

2           (5)   An attestation, executed by the chief financial officer, the chief  
3           executive officer, and a controlling person of the applicant, that the  
4           licensee is current as of the date the application is submitted with  
5           respect to all of its obligations for payroll, payroll-related taxes,  
6           workers' compensation insurance, and employee benefits. If any such  
7           obligations are in dispute as of the date the application is submitted  
8           with a client company and the disputed amount is material when  
9           considered in the context of the applicant's most recent audited  
10          financial statement, then the applicant shall disclose the nature of the  
11          dispute causing the obligations to be unpaid and the amount of money  
12          in controversy.

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

17          (b)   Every applicant shall file with the Commissioner evidence of financial  
18          responsibility. Evidence of financial responsibility includes an audited GAAP financial  
19          statement, prepared as of a date not more than 90 days before the date of application  
20          that demonstrates that the applicant or licensee is not in a hazardous financial condition  
21          and attached to which is a separate document signed by the chief executive officer, the  
22          chief financial officer, and any other controlling person of the licensee certifying that (i)  
23          each has reviewed the financial statement; (ii) based on each signatory's knowledge, the  
24          financial statement does not contain any untrue or misleading statement of material fact  
25          or omit a fact with respect to the period covered by the financial statement; and (iii)  
26          based on each signatory's knowledge, the financial statement fairly presents in all  
27          material respects the financial condition of the licensee as of, and for, the period  
28          presented in the financial statement.

29          Notwithstanding the requirements of this subsection, the Commissioner may accept  
30          an audited GAAP financial statement that has been prepared more than 90 days before  
31          submission to the Commission if the Commissioner deems it appropriate and subject to  
32          conditions imposed by the Commissioner.

33          (c)   Every applicant shall submit to the Commissioner the application fee  
34          pursuant to G.S. 58-89-65.

35          (d)   Every applicant shall furnish the Commissioner a complete set of fingerprints  
36          and a recent passport-size, full-face photograph of each controlling person. Each  
37          controlling person's fingerprints shall be certified by an authorized law enforcement  
38          officer.

39          The Department of Justice may provide to the North Carolina Department of  
40          Insurance from the State and National Repositories of Criminal Histories the criminal  
41          history of any applicant for licensure as a professional employer organization under this  
42          Article. Along with the request, the Department shall provide to the Department of  
43          Justice the fingerprints of the applicant, a form signed by the applicant consenting to the  
44          criminal record check and use of fingerprints and other identifying information required

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

10 In the event that an applicant has secured a professional employer organization  
11 license in another state in which the professional employer organization's controlling  
12 persons have completed a criminal background investigation within 12 months of this  
13 application, a certified copy of the report from the appropriate authority of that state  
14 may satisfy the requirement of this subsection. This subsection also applies to a change  
15 in a controlling party of a professional employer organization. For purposes of  
16 investigation under this subsection, the Commissioner shall have all the power  
17 conferred by G.S. 58-2-50 and other applicable provisions of this Chapter.

18 (e) An application for licensure of a professional employer organization group  
19 shall contain the information and submissions required by this section for each member  
20 of the group.

21 (f) No application is complete until the Commissioner has received all  
22 information and submissions required under subsections (a) through (e) of this section.  
23 Subsections (a) through (e) of this section do not apply to persons who are licensed  
24 pursuant to the alternative licensing procedures set forth in G.S. 58-89-76.

25 (g) The Commissioner may deny the license of an applicant under this Article if,  
26 after notice to the applicant and an opportunity for a hearing, the Commissioner finds  
27 that a controlling person has:

- 28 (1) Made any untrue material statement regarding the background or  
29 experience of any controlling person;
- 30 (2) Violated, or failed to comply with, any professional employer services  
31 law or any rule or order of the Commissioner or of any other State  
32 official responsible for the regulation of professional employer  
33 services;
- 34 (3) Obtained or attempted to obtain the license through misrepresentation  
35 or fraud;
- 36 (4) Been convicted of a felony;
- 37 (5) Been found in a final judgment or administrative proceeding to have  
38 committed fraud or an unfair trade practice; or
- 39 (6) Been a controlling person in another professional employer  
40 organization that has had its license or registration suspended,  
41 terminated, or revoked by any state.

42 (h) If the Commissioner finds that the applicant has not fully met the  
43 requirements for licensure, the Commissioner shall refuse to issue the license and shall  
44 notify the applicant in writing of the denial, stating the grounds for the denial. The

1 application may also be denied for any reason for which a license may be suspended or  
2 terminated under G.S. 58-89-155. Within 30 days after service of the notification, the  
3 applicant may make a written demand upon the Commissioner for a review to determine  
4 the reasonableness of the Commissioner's action. The review shall be completed  
5 without undue delay, and the applicant shall be notified promptly in writing as to the  
6 outcome of the review. Within 30 days after service of the notification as to the  
7 outcome, the applicant may make a written demand upon the Commissioner for a  
8 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant  
9 disagrees with the outcome.

10 (i) Removal, demotion, or discharge of a controlling person in response to an  
11 order of the Commissioner of the alleged unsuitability of that person is an affirmative  
12 defense to any claim by that individual based on the removal, demotion, or discharge.

13 (j) A controlling person who has been evaluated by the Commissioner under this  
14 Article is not required to be reevaluated if that person changes the person's affiliation or  
15 employment from one applicant or licensee to another applicant or licensee.

16 (k) After denial, suspension, or termination of a license, and before issuing a new  
17 license or reinstating a license, the Commissioner shall review and consider:

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

20 (2) Whether the applicant or licensee has demonstrated that the applicant  
21 or licensee had exercised due diligence to avoid the reason or reasons  
22 for the denial or termination.

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

25 **"§ 58-89-65. Fees.**

26 (a) Each applicant for a professional employer organization license or limited  
27 professional employer organization license shall pay to the Commissioner, before the  
28 issuance of the license, a nonrefundable application fee of one thousand dollars  
29 (\$1,000).

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

32 (c) Each applicant for alternative licensing under G.S. 58-89-76 and each  
33 applicant for renewal of a license provided under G.S. 58-89-76 shall pay to the  
34 Commissioner, before issuance or renewal of the license, a fee of five hundred dollars  
35 (\$500.00).

36 (d) When the Commissioner finds that a licensee has committed an act that is a  
37 ground for disciplinary violation under G.S. 58-89-155 or that a licensee has committed  
38 a prohibited act in violation of G.S. 58-89-170, and such decision becomes final  
39 following the conclusion of all administrative or judicial proceedings, the  
40 Commissioner may charge an applicant or licensee reasonable fees to recover the  
41 Department's costs associated with investigations, inspections, examinations, and any  
42 other administrative or enforcement responsibilities created under this Article.

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

4 **"§ 58-89-70. License issuance and maintenance.**

5 (a) The Commissioner shall issue a license to an applicant whom the  
6 Commissioner determines has satisfied the requirements of this Article. The  
7 Commissioner shall notify an applicant of any deficiency in the application not later  
8 than the 60th day after the date on which the Commissioner receives the application.  
9 The Commissioner shall issue the license not later than the 90th day after the date on  
10 which the completed application is filed with the Commissioner.

11 (b) A license issued by the Commissioner under this Article shall remain in effect  
12 until revoked, suspended, surrendered, or otherwise terminated.

13 (c) By obtaining licensure under this Article, the controlling persons of a licensee  
14 certify, under penalty of law, their compliance with the requirements of licensure and of  
15 operation as a professional employer organization pursuant to this Article.

16 (d) Within 120 days after the end of each fiscal year, each licensee shall file with  
17 the Commissioner all of the following information:

18 (1) Evidence of "financial responsibility" as set forth in G.S. 58-89-60(b).

19 (2) Any information required by G.S. 58-89-60(a)(1), (2), (3), or (4) for  
20 which there has been a change since the last or initial filing. Any  
21 change of controlling persons may subject the licensee to a  
22 background investigation of those controlling persons as required by  
23 G.S. 58-89-60.

24 (3) Information required by G.S. 58-89-60(a)(6).

25 (4) The annual filing fee, pursuant to G.S. 58-89-65.

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

28 (e) In order to maintain licensure, each licensee may be required to file with the  
29 Commissioner no later than 45 days after the end of each quarter of the fiscal year:

30 (1) A financial statement for the preceding quarter that is not audited and  
31 is set forth in a format similar to the annual audited GAAP financial  
32 statement; and

33 (2) An attestation, executed by the chief financial officer, the chief  
34 executive officer, and a controlling person of the licensee, that the  
35 licensee is current with respect to all of its obligations for payroll,  
36 payroll-related taxes, workers' compensation insurance, and employee  
37 benefits. If any of the obligations listed in this subdivision are in  
38 dispute with a client and the disputed amount is material when  
39 considered in the context of the licensee's most recent audited financial  
40 statement, then the licensee shall disclose the nature of the dispute  
41 causing the obligations to be unpaid and the amount of money in  
42 controversy.

1 **"§ 58-89-75. Limited license.**

2 The Commissioner by rule shall provide for the issuance of a limited license to a  
3 person who seeks to offer limited professional employer services in this State.

4 **"§ 58-89-76. Alternative licensing.**

5 The Commissioner, by rule, may provide for the acceptance of an affidavit by a  
6 bonded, independent, and qualified assurance organization that has been approved by  
7 the Commissioner certifying the qualifications of a professional employer organization  
8 for licensing under this Article in lieu of the requirements of G.S. 58-89-40 through  
9 G.S. 58-89-60.

10 **"§ 58-89-80. License not assignable; change of name or location.**

11 (a) A licensee shall not conduct business under any name other than that  
12 specified in the license. A license issued under this Article is not assignable. A licensee  
13 shall not conduct business under any fictitious or assumed name without prior written  
14 authorization from the Commissioner. The Commissioner shall not authorize the use of  
15 a name that is so similar to that of a public office or agency or to that of another licensee  
16 that the public may be confused or misled by the name's use. A licensee shall not  
17 conduct business under more than one name unless the licensee has obtained a separate  
18 license for each name or the licensee is operating under a group license pursuant to G.S.  
19 58-89-35.

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

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

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

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

31 (3) A change in the location of business records maintained by the  
32 licensee.

33 (d) A licensee may advertise in this State using only the name that is on the  
34 license issued by the Commissioner.

35 (e) Each written proposal provided to a prospective client company and each  
36 PEO agreement between a licensee and a client company or assigned employee shall  
37 clearly identify the name of the licensee.

38 **"§ 58-89-85. Supervision; rehabilitation; liquidation.**

39 If at any time the Commissioner determines, after notice and an opportunity for the  
40 licensee to be heard, that a licensee (i) has been or will be unable, in such a manner as  
41 may endanger the ability of the licensee, to fully perform its obligations pursuant to this  
42 Article or (ii) is bankrupt or in a hazardous financial condition, the Commissioner may  
43 either (i) commence a supervision proceeding pursuant to Article 30 of this Chapter or  
44 (ii) apply to the Superior Court of Wake County or to the federal bankruptcy court that

1 has previously taken jurisdiction over the licensee, if applicable, for an order directing  
2 the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a  
3 licensee in accordance with Article 30 of this Chapter.

4 **"§ 58-89-90. Reserved.**

5 "Part 3. Licensee Duties and Responsibilities.

6 **"§ 58-89-95. Agreement; notice.**

7 (a) A licensee shall establish the terms of a PEO agreement by a written contract  
8 between the licensee and the client company.

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

14 (c) The licensee shall give each employee written notice when the employee  
15 ceases to be an employee of the licensee.

16 **"§ 58-89-100. Contract requirements.**

17 A contract between a licensee and a client company shall provide:

- 18 (1) That the licensee reserves a right of direction and control over  
19 employees assigned to a client company's work sites. However, a  
20 client company may retain such sufficient direction and control over  
21 the assigned employees as is necessary to conduct the client company's  
22 business and without which the client company would be unable to  
23 conduct its business, to discharge any fiduciary responsibility that it  
24 may have, or to comply with any applicable licensure, regulatory, or  
25 statutory requirement of the client company. The PEO agreement shall  
26 provide that employment responsibilities not allocated to the licensee  
27 by the PEO agreement or this section remain with the client company.
- 28 (2) That the licensee assumes responsibility for the payment of wages to  
29 the assigned employees as agreed to in the PEO agreement.
- 30 (3) That the licensee assumes responsibility for the payment of payroll  
31 taxes and collection of taxes from payroll on assigned employees.
- 32 (4) That the licensee reserves a right to hire, fire, and discipline the  
33 assigned employees.
- 34 (5) That the licensee retains a right of direction and control over the  
35 adoption of employment policies and the management of workers'  
36 compensation claims, claim filings, and related procedures in  
37 accordance with applicable federal laws and the laws of this State.
- 38 (6) That responsibility to obtain workers' compensation coverage for  
39 assigned employees, from an entity authorized to do business in this  
40 State and otherwise in compliance with all applicable requirements,  
41 shall be specifically allocated in the PEO agreement to either the client  
42 company or the licensee. If the responsibility is allocated to the  
43 licensee under any such agreement, that agreement shall require that  
44 the licensee maintain and provide to the client company, at the

1 termination of the agreement if requested by the client company,  
2 records regarding the loss experience related to workers' compensation  
3 insurance provided to assigned employees pursuant to the agreement.

4 **"§ 58-89-105. Employee benefit plans; required disclosure; other reports.**

5 (a) A licensee may sponsor and maintain employee benefit plans for the benefit  
6 of assigned employees.

7 (b) A client company may sponsor and maintain employee benefit plans for the  
8 benefit of assigned employees.

9 (c) If a licensee offers to its assigned employees any health benefit plan that is  
10 not fully insured by an authorized insurer, the plan shall:

11 (1) Utilize a third-party administrator licensed or registered to do business  
12 in this State;

13 (2) Hold all plan assets, including participant contributions, in a trust  
14 account; and

15 (3) Provide sound reserves for the plan as determined using generally  
16 accepted actuarial standards.

17 (d) For purposes of this section, a "plan of self-insurance" includes any  
18 arrangement except an arrangement under which an insurance company licensed to  
19 write insurance in this State has issued an insurance policy that covers all of the  
20 obligations of the health benefit plan.

21 **"§ 58-89-110. Workers' compensation insurance.**

22 (a) A licensee or the licensee's client company shall provide workers'  
23 compensation insurance coverage through a licensed insurance carrier or a licensed  
24 self-insurance plan for the licensee's assigned employees as provided in Chapter 97 of  
25 the General Statutes, the Workers' Compensation Act. To the extent that the licensee  
26 secures and maintains workers' compensation coverage for assigned employees, the  
27 carrier may elect to provide such coverage to the licensee pursuant to either the multiple  
28 coordinated policy method, as set forth in subsection (b) of this section, or the single  
29 policy method, as set forth in subsection (c) of this section.

30 (b) If the licensee provides workers' compensation coverage pursuant to the  
31 multiple coordinated policy method, the licensee shall secure a separate policy for each  
32 client company of the licensee. Each policy shall identify the name of the client  
33 company and the licensee. The licensee shall be named as the insured and identify the  
34 client company. The licensee shall specify that it is the labor contractor for the client  
35 company by using the designation "L/C/F" on the policy.

36 Each policy shall expire on the same date. The policy shall not include coverage for  
37 nonleased employees of the client company or employees solely employed by the  
38 licensee. Only the licensee, as the first-named insured under such a policy, may request  
39 the insurer to cancel the policy. Each policy shall be sent to the licensee as the named  
40 insured.

41 The client company of a licensee shall have a continuing obligation to provide  
42 coverage as required by Chapter 97 of the General Statutes, the Workers' Compensation  
43 Act, for any employees of the client company who are not assigned employees and not  
44 otherwise covered under a policy described in this subsection.

1 If a client company of a licensee leases employees from more than one licensee,  
2 there shall be a separate policy for the assigned employees of each licensee.

3 The workers' compensation carrier also shall issue a policy covering the internal  
4 employees of the licensee unless they are otherwise covered.

5 All policies written in accordance with this subsection by the same insurance carrier  
6 that reference the same licensee as labor contractor shall be combined for premium  
7 discount purposes.

8 When policies written in accordance with this subsection are written by the same  
9 insurance carrier, the carrier and licensee may agree to a retrospective rating program or  
10 any other permitted pricing program.

11 Whenever a policy written in accordance with this subsection is cancelled, the  
12 insurance company writing the policy shall provide individual notices of cancellation as  
13 required by this Chapter to the licensee and the client company of the licensee.

14 (c) If the licensee provides workers' compensation coverage pursuant to the  
15 single policy method, the insurer shall issue to the licensee a single policy covering all  
16 assigned employees in this State in accordance with Chapter 97 of the General Statutes,  
17 the Workers' Compensation Act, and any other applicable laws or rating plans of this  
18 State.

19 As a condition of issuing a single policy, the licensee shall provide to the insurer of  
20 the policy all of the following information regarding each client company of the  
21 licensee with assigned employees in this State:

22 (1) The correct legal name, any fictitious names, and the federal  
23 identification number.

24 (2) The name and address of the president and chief executive officer.

25 (3) The business mailing address.

26 (4) The business telephone number and facsimile number.

27 The licensee shall also provide to the insurer the name and address of the insurance  
28 agent or broker responsible for securing the policy of insurance on behalf of the  
29 licensee.

30 The insurer shall issue to each client company of the licensee a certificate of  
31 insurance on the single policy. The certificate of insurance shall require that the insurer  
32 provide notice of cancellation to the licensee and the client company of the licensee.

33 Whenever a policy written in accordance with this subsection is cancelled, the  
34 insurance company writing the policy shall provide individual notices of cancellation as  
35 required by this Chapter to the licensee and the client company of the licensee.

36 If the insurer fails to provide individual notices of cancellation to the licensee and  
37 the client company, the insurer shall remain liable on the risk for losses incurred by the  
38 client company that would have been covered by the workers' compensation policy  
39 prior to the attempted cancellation.

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

1 commensurate with exposure and anticipated claim experience for all employees  
2 covered under policies in the name of the licensee.

3 (e) Each licensee shall maintain and make available to its workers' compensation  
4 carrier on an annual basis the following information:

5 (1) The correct name and federal identification number of each client  
6 company.

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

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

11 (4) Sufficient information to permit the calculation of an experience  
12 modification factor for each client company upon termination of the  
13 professional employer relationship. Information accruing during the  
14 term of the leasing arrangement that is used to calculate an experience  
15 modification factor for a client company upon termination of the  
16 leasing relationship shall continue to be used in the future experience  
17 ratings of the licensee.

18 (f) Every Form 19 "Employer's Report of Employee's Injury or Occupational  
19 Disease to the Industrial Commission" filed with the Industrial Commission shall  
20 identify by name and address both the licensee and the client company employing the  
21 employee who is the subject of the Form 19.

22 (g) A licensee shall, within 30 days of initiation or termination of the licensee's  
23 relationship with any client company, notify its workers' compensation carrier, the  
24 Commissioner, and the North Carolina Industrial Commission of both the initiation and  
25 termination of the relationship. If the client company terminates the relationship  
26 between the licensee and the client company, the notice required by this subsection shall  
27 be given within 10 days of the licensee's actual knowledge of the termination.

28 (h) If the professional employer services arrangement with a client company is  
29 terminated, the client company shall be assigned an experience modification factor that  
30 reflects its experience during the experience period specified by the approved  
31 experience rating plan, including, if applicable, experience incurred for assigned  
32 employees under the PEO agreement.

33 (i) A client company shall not enter into a PEO agreement or be eligible for  
34 workers' compensation coverage in the voluntary market if the client-workers' company  
35 owes its current or prior carrier any premium for workers' compensation insurance, or if  
36 the client company owes its current or prior professional employer organization  
37 amounts due under the PEO agreement, except for premiums or amounts due that are  
38 subject to dispute. For the purposes of this section and compliance with other laws and  
39 rules, a licensee may rely on a statement by the client company that the client company  
40 has met any and all prior premium or fee obligations, unless the licensee has actual  
41 knowledge to the contrary.

42 (j) This section shall not prevent a client company of a licensee from providing  
43 workers' compensation insurance coverage for assigned employees coemployed by the

1 client company and the licensee through a policy of insurance issued by a licensed  
2 insurance carrier in the name of the client company as the insured.

3 (k) Irrespective of whether the licensee or client company maintains the policy of  
4 workers' compensation insurance for the covered employees pursuant to the PEO  
5 agreement, the licensee and the client company shall be entitled to the exclusivity of the  
6 remedy under both the workers' compensation and the employer liability provision of  
7 the workers' compensation policy or plan that either party has secured and shall both be  
8 afforded the protections provided under Chapter 97 of the General Statutes. The  
9 licensee shall be entitled, along with the client company, to the exclusivity of the  
10 remedy under both the workers' compensation and employers' liability provision of the  
11 workers' compensation policy or plan that either party has secured.

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

15 **"§ 58-89-112. Liabilities.**

16 Subject to any contrary provisions thereof, the PEO agreement shall be interpreted  
17 for purposes of insurance, bonding, and employer's liability as follows:

18 (1) A licensee is not liable for the acts, errors, or omissions of a client  
19 company or of any assigned employee or for the quality, adequacy, or  
20 safety of the goods or services produced or sold in the client  
21 company's business. A client company is not liable for the acts, errors,  
22 or omissions of a licensee or of any employee of a licensee. Nothing in  
23 this section limits any contractual liability between a licensee and the  
24 client company or limits any liability or responsibility under this  
25 Article.

26 (2) Employees assigned to a client company by a licensee are the  
27 employees of the client company for the purposes of general liability  
28 insurance, automobile insurance, fidelity bonds, surety bonds, and  
29 liquor liability insurance carried by the client company unless the  
30 employees are included by specific reference in the applicable PEO  
31 agreement, insurance contract, or bond.

32 **"§ 58-89-115. Benefit plan notice.**

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

36 (1) The type of coverage.

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

38 (3) The amount of benefits provided for each type of coverage and to  
39 whom or on whose behalf benefits are to be paid.

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

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

43 (b) With respect to any insurance or benefit plan provided by a licensee for the  
44 benefit of its assigned employees, a licensee shall provide to the insurer the name and

1 address of the insurance agent or broker responsible for securing the policy of insurance  
2 on behalf of the licensee.

3 (c) Whenever any insurance policy or benefit plan is cancelled, the insurance  
4 company writing the policy shall provide a notice of cancellation as required by this  
5 Chapter.

6 (d) The licensee shall notify the client company and the Commissioner in writing  
7 about a discontinuance and replacement, if any, of any health plan or workers'  
8 compensation insurance coverage no later than 10 business days after the  
9 discontinuance.

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

12 **"§ 58-89-120. Unemployment taxes; payroll.**

13 A licensee is the employer of an assigned employee for purposes of Chapters 95 and  
14 96 of the General Statutes. The Employment Security Commission shall cooperate with  
15 the Commissioner in the investigation of applicants and licensees and shall provide the  
16 Commissioner with access to all relevant records and data in the custody of the  
17 Employment Security Commission.

18 **"§ 58-89-125. Posting requirements.**

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

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

25 **"§ 58-89-130. Contractual duties.**

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

28 (1) Insurance premiums.

29 (2) Benefit and welfare plans.

30 (3) Other employee withholding.

31 (4) Any other expressed responsibility that is within the scope of the PEO  
32 agreement and that fulfills the duties imposed under this Article.

33 **"§ 58-89-135. Compliance with other laws.**

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

36 **"§ 58-89-140. Required information.**

37 Each licensee shall:

38 (1) Maintain adequate books and records regarding the licensee's duties  
39 and responsibilities, including accounting and employment records  
40 relating to all PEO agreement activities, for a minimum of three years.

41 (2) Maintain and make available at all times to the Commissioner the  
42 following information, which shall be treated as proprietary and  
43 confidential and which is exempt from disclosure to persons other than



1           f. A crime that involves dishonesty or breach of trust.

2           (2) Engaging in professional employer services or offering to engage in  
3           the provision of professional employer services without a license.

4           (3) Failure to provide notice in writing of the discontinuance and  
5           replacement, if any, of any insurance coverage, to the Commissioner  
6           and client company within 10 business days of the discontinuance of  
7           any insurance coverage pursuant to G.S. 58-89-115.

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

9           (5) Failure to satisfy any of the requirements for licensure in this Article.

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

12          **"§ 58-89-160. Sanctions.**

13          (a) On a finding that a ground for disciplinary action exists under G.S.  
14          58-89-155, the Commissioner may suspend or terminate a license, impose a civil  
15          penalty, and seek an order of restitution under G.S. 58-2-70.

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

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

22          **"§ 58-89-165. Injunctions; civil remedies; cease and desist orders.**

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

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

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

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

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

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

5 **"§ 58-89-170. Prohibited acts.**

6 No person shall do any of the following:

7 (1) Engage in or offer professional employer services without holding a  
8 license under this Article as a professional employer organization.

9 (2) Use the name or title "staff leasing company", "employee leasing  
10 company", "licensed staff leasing company", "staff leasing services  
11 company", "professional employer organization", or "administrative  
12 employer" or otherwise represent that the person is licensed under this  
13 Article unless the person holds a license issued under this Article.

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

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

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

20 **"§ 58-89-175. Criminal penalty.**

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

24 **SECTION 2.** The Department of Insurance shall report to the 2005 General  
25 Assembly on the implementation, administration, and enforcement of Article 89 of  
26 Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the  
27 Department shall recommend any statutory changes required to regulate professional  
28 employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

29 **SECTION 3.** Each professional employer organization operating within this  
30 State as of January 1, 2004, shall complete its initial licensing not later than 180 days  
31 after January 1, 2004. Each professional employer organization not operating within  
32 this State as of January 1, 2004, shall complete its initial licensing prior to  
33 commencement of operations within this State.

34 **SECTION 4.** If any section or provision of this act is declared  
35 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the  
36 validity of the act as a whole or any part other than the part so declared to be  
37 unconstitutional, preempted, or otherwise invalid.

38 **SECTION 5.** This act becomes effective January 1, 2004, and applies to any  
39 contracts entered into, any business conducted, and any actions taken on or after that  
40 date.