

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE DRS15158-MH-105 (03/14)

Short Title: PEO Act Amendments.

(Public)

Sponsors: Senator Meredith (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE VARIOUS TECHNICAL, CLARIFYING, AND OTHER CHANGES  
3 TO THE PROFESSIONAL EMPLOYER ORGANIZATION STATUTES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-89A-5 reads as rewritten:

6 "§ 58-89A-5. Definitions.

7 In this Article:

8 ...

9 (8) "Hazardous financial condition" ~~has the same meaning as in~~  
10 ~~G.S. 58-47-60(9).~~ means inability by an applicant for an original or renewal  
11 license to demonstrate a net worth of at least fifty thousand dollars  
12 (\$50,000). For purposes of this definition, the applicant shall demonstrate  
13 net worth by providing the Department with the applicant's audited financial  
14 statements. The net worth requirement also may be satisfied through  
15 guarantees, letters of credit, or other security acceptable to the Department.

16 ...."

17 SECTION 2. G.S. 58-89A-50 reads as rewritten:

18 "§ 58-89A-50. Surety bond; letter of credit; other deposits.

19 (a) An applicant for licensure shall file with the Commissioner a surety ~~bond for the~~  
20 ~~benefit of the Commissioner as follows:~~

21 (1) ~~If the applicant was initially licensed prior to October 1, 2008, the bond, or~~  
22 ~~other items as provided for in subsection (f) of this section, shall be in the~~  
23 ~~amount of one hundred thousand dollars (\$100,000).~~

24 (2) ~~If the applicant was not initially licensed prior to October 1, 2008, the bond,~~  
25 ~~or other items as provided for in subsection (f) of this section, shall be in an~~  
26 ~~amount equal to five percent (5%) of the applicant's prior year's total North~~  
27 ~~Carolina wages, benefits, workers compensation premiums, and~~  
28 ~~unemployment compensation contributions, but not greater than five~~  
29 ~~hundred thousand dollars (\$500,000), or such greater amount as the~~  
30 ~~Commissioner may require.~~

31 bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred  
32 thousand dollars (\$100,000) for the benefit of the Commissioner.

33 (b) The surety bond required by this section shall be in a form acceptable to the  
34 Commissioner, issued by an insurer authorized by the Commissioner to write surety business in  
35 this State, and maintained in force while the license remains in effect or any obligations or



1 liabilities of the applicant, licensee or PEO previously licensed by this State remain  
2 outstanding.

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

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

9 ...."

10 **SECTION 3.** G.S. 58-89A-60(b) reads as rewritten:

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

22 Notwithstanding the requirements of this subsection, the Commissioner may, in the  
23 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared  
24 more than 90 days before submission to the Commissioner if the Commissioner deems such  
25 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose  
26 conditions upon such acceptance of financial statements prepared more than 90 days prior to  
27 submission."

28 **SECTION 4.** G.S. 58-89A-95 reads as rewritten:

29 **"§ 58-89A-95. ~~Agreement; notice.~~ Agreement.**

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

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

36 ~~(c) The licensee shall give each employee written notice when the employee ceases to  
37 be an employee of the licensee."~~

38 **SECTION 5.** G.S. 58-89A-100 reads as rewritten:

39 **"§ 58-89A-100. Contract requirements.**

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

- 41 (1) ~~That the licensee reserves a right of direction and control over employees  
42 assigned to a client company's work sites. However, a client company may  
43 retain such sufficient direction and control over the assigned employees as is  
44 necessary to conduct the client company's business and without which the  
45 client company would be unable to conduct its business, to discharge any  
46 fiduciary responsibility that it may have, or to comply with any applicable  
47 licensure, regulatory, or statutory requirement of the client company. The  
48 PEO agreement shall provide that employment responsibilities not allocated  
49 to the licensee by the PEO agreement or this section remain with the client  
50 company.~~

- 1           (2)     That the licensee assumes responsibility for the payment of wages to the  
2           assigned employees as agreed to in the PEO agreement.
- 3           (3)     That the licensee assumes responsibility for the payment of payroll taxes and  
4           collection of taxes from payroll on assigned employees.
- 5           ~~(4)     That the licensee reserves a right to hire, fire, and discipline the assigned  
6           employees.~~
- 7           (5)     That the licensee retains a right of direction and control over the adoption of  
8           employment policies and the management of workers' compensation claims,  
9           claim filings, and related procedures in accordance with applicable federal  
10          laws and the laws of this State.
- 11          (6)     That responsibility to obtain workers' compensation coverage for assigned  
12          employees, from an entity authorized to do business in this State and  
13          otherwise in compliance with all applicable requirements, shall be  
14          specifically allocated in the PEO agreement to either the client company or  
15          the licensee. If the responsibility is allocated to the licensee under any such  
16          agreement, that agreement shall require that the licensee maintain and  
17          provide to the client company, at the termination of the agreement if  
18          requested by the client company, records regarding the loss experience  
19          related to workers' compensation insurance provided to assigned employees  
20          pursuant to the agreement."

21          **SECTION 6.** G.S. 58-89A-145 is repealed.

22          **SECTION 7.** G.S. 58-89A-155(a)(4) is repealed.

23          **SECTION 8.** This act becomes effective July 1, 2013.