

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 1274
Commerce Committee Substitute Adopted 7/16/02**

Short Title: Regulate Professional Employer Organizations. (Public)

Sponsors:

Referred to:

June 6, 2002

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE PROFESSIONAL EMPLOYER ORGANIZATIONS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding the
5 following new Article to read:

"Article 89.

"North Carolina Professional Employer Organization Act.

"Part 1. In General.

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9 **"§ 58-89-1. Title.**

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

12 **"§ 58-89-5. Definitions.**

13 In this Article:

- 14 (1) "Applicant" means a person applying for a license under this Article.
15 (2) "Assigned employee" means an employee who is performing services
16 for a client company under a contract between a licensee and a client
17 company in which employment responsibilities are shared. "Assigned
18 employee" does not include an employee hired to support or
19 supplement a client company's workforce in a special work situation,
20 including:
21 a. An employee absence.
22 b. A temporary skill shortage.
23 c. A seasonal workload.
24 d. A special assignment or project.
25 (3) "Client company" means a person that contracts with a licensee and is
26 assigned employees by the licensee under that contract.
27 (4) "Control", including the terms "controlling", "controlled by", and
28 "under common control with" have the same meanings as in G.S.
29 58-19-5(2).

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

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

- 5 a. An employee absence;
6 b. A temporary skill shortage;
7 c. A seasonal workload; or
8 d. A special assignment or project.

9 **"§ 58-89-10. North Carolina Professional Employer Organization Advisory**
10 **Council.**

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

- 15 (1) The Commissioner of Labor or the Commissioner's designee, ex
16 officio.
17 (2) The Chair of the North Carolina Industrial Commission or the Chair's
18 designee, ex officio.
19 (3) Two members appointed by the Governor, from a list of five persons
20 recommended by the North Carolina Industrial Commission.
21 (4) One member appointed by the Governor who is not involved directly
22 or indirectly with the employee leasing services industry.
23 (5) One member appointed by the General Assembly in accordance with
24 G.S. 120-121, upon the recommendation of the President Pro Tempore
25 of the Senate.
26 (6) One member appointed by the General Assembly in accordance with
27 G.S. 120-121, upon the recommendation of the Speaker of the House
28 of Representatives.

29 Initial terms begin January 1, 2003.

30 (b) Other than the initial members of the Council, members of the Council shall
31 serve three-year terms. Initial members of the Council shall serve staggered terms as
32 follows:

- 33 (1) One member appointed by the Governor from the list recommended by
34 the North Carolina Industrial Commission and the member appointed
35 by the General Assembly upon the recommendation of the President
36 Pro Tempore of the Senate shall serve terms of three years.
37 (2) One member appointed by the Governor from the list recommended by
38 the North Carolina Industrial Commission and the member appointed
39 by the General Assembly upon the recommendation of the Speaker of
40 the House of Representatives shall serve terms of two years.
41 (3) The member appointed by the Governor who is not directly or
42 indirectly involved in the employee leasing services industry shall
43 serve a term of one year.

1 (c) The members of the Council shall elect one of their members to serve as chair
2 of the Council for a term of one year.

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

7 (e) All vacancies occurring on the Council shall be filled, for the unexpired term,
8 by the appointing authority making the original appointment. Vacancies in
9 appointments made by the General Assembly shall be filled in accordance with G.S.
10 120-122.

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

13 (g) The members of the Council shall not receive compensation for their service
14 on the Council.

15 **"§ 58-89-15. Rules.**

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

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

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

23 **"§ 58-89-20. Interagency cooperation.**

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

27 **"§ 58-89-25. Effect of other law on client companies and assigned employees.**

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

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

34 (c) A licensee is not engaged in the unauthorized practice of an occupation, trade,
35 or profession that is licensed, certified, or otherwise regulated by a State agency or other
36 political subdivision of the State, including a county or city, by entering into an
37 employee leasing services agreement with a client company and assigned employees.

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

42 **"§ 58-89-30. Other provisions of this Chapter.**

1 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,
2 58-2-100, 58-2-155, 58-2-163, 58-2-180, 58-2-185, 58-2-200, and 58-3-100 shall apply
3 to persons licensed under this Article.

4 "Part 2. License Requirements and Limitations.

5 **"§ 58-89-35. License required; professional employer organization groups.**

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

8 (b) Two or more, but not more than five, professional employer organizations
9 that are controlled by the same ultimate parent, entity, or persons may be licensed as a
10 professional employer organization group. A professional employer organization group
11 may satisfy the reporting and financial requirements of this Article on a consolidated
12 basis. As a condition of licensure as a professional employer organization group, each
13 professional employer organization that is a member of the group shall guarantee
14 payment of all financial obligations of every other member.

15 **"§ 58-89-40. General license requirements.**

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

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

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

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

25 **"§ 58-89-45. Background investigations.**

26 (a) Before a license is issued to an applicant, each applicant shall furnish the
27 Commissioner a complete set of fingerprints and a recent passport-size, full-face
28 photograph of each officer and controlling person. Each officer's and controlling
29 person's fingerprints shall be certified by an authorized law enforcement officer. The
30 fingerprints of every officer and controlling person shall be forwarded to the State
31 Bureau of Investigation for a search of the officer's and controlling person's criminal
32 history record file, if any. If warranted, the State Bureau of Investigation shall forward a
33 set of the fingerprints to the Federal Bureau of Investigation for a national criminal
34 history record check. An applicant shall pay the cost of the State and any national
35 criminal history check of the officers and controlling persons.

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

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

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

- 1 (3) Obtained or attempted to obtain the license through misrepresentation
2 or fraud;
3 (4) Been convicted of a felony;
4 (5) Been found to have committed any unfair trade practice or fraud;
5 (6) Used fraudulent, coercive, or dishonest practices, or acted in a manner
6 that is incompetent, untrustworthy, or financially irresponsible; or
7 (7) Held such a position in another professional employer organization
8 that has had its license or registration suspended, terminated, or
9 revoked by any state.

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

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

14 **§ 58-89-50. Surety bond.**

15 (a) An applicant shall acquire and maintain a surety bond for the benefit of the
16 Commissioner in an amount equal to not less than five percent (5%) of the prior year's
17 total North Carolina wages, benefits, workers' compensation premiums, and
18 unemployment compensation contributions, but not less than one hundred thousand
19 dollars (\$100,000), or such other greater amount as the Commissioner may require. A
20 copy of the executed bond shall be filed with the Commissioner at the time of
21 application for licensure.

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

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

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

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

33 **§ 58-89-55. Financial responsibility.**

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

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

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

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

7 **"§ 58-89-60. License application.**

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

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

- 14 (1) The name, organizational structure, and date of organization of the
15 applicant, the addresses of the principal office and all offices in this
16 State, the name of the contact person, the type of operations within this
17 State, and the taxpayer or employer identification number.
18 (2) A list by jurisdiction of each name under which the applicant has
19 operated in the preceding five years, including any alternative names,
20 names of predecessors and, if known, successor business entities. The
21 list required by this subdivision shall include the parent company name
22 and any trade name, trademark, or service mark of the applicant.
23 (3) A list of all officers and controlling persons of the applicant, their
24 biographical information, including their management background,
25 and an affidavit from each attesting to his or her good moral character
26 and management competence.
27 (4) Documentation that the applicant maintains a place of business in this
28 State and that the applicant is licensed, if required, in the applicant's
29 state of domicile.
30 (5) The location of the business records of the applicant.
31 (6) Evidence that the applicant has acquired a surety bond, in accordance
32 with G.S. 58-89-50, to secure the performance of the applicant's
33 obligations pursuant to this Article.
34 (7) Evidence of financial responsibility in accordance with G.S. 58-89-55.
35 (8) Evidence that the applicant has paid all of its obligations for payroll,
36 payroll-related taxes, workers' compensation insurance, and employee
37 benefits. All disputed amounts shall be disclosed in the application.
38 (9) Any other information the Commissioner deems necessary and
39 requires by rule to establish that the applicant and the officers and
40 controlling persons are of good moral character, business integrity, and
41 financial responsibility.

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

1 (d) If the Commissioner finds that the applicant has not fully met the
2 requirements for licensure, the Commissioner shall refuse to issue the license and shall
3 notify the applicant in writing of the denial, stating the grounds for the denial. The
4 application may also be denied for any reason for which a license may be suspended or
5 terminated under G.S. 58-89-155. Within 30 days after service of the notification, the
6 applicant may make a written demand upon the Commissioner for a review to determine
7 the reasonableness of the Commissioner's action. The review shall be completed
8 without undue delay, and the applicant shall be notified promptly in writing as to the
9 outcome of the review. Within 30 days after service of the notification as to the
10 outcome, the applicant may make a written demand upon the Commissioner for a
11 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant
12 disagrees with the outcome.

13 (e) Removal, demotion, or discharge of an officer or a controlling person in
14 response to an order of the Commissioner of the alleged unsuitability of that officer or
15 controlling person is an affirmative defense to any claim by that individual based on the
16 removal, demotion, or discharge.

17 (f) An officer or controlling person who has been evaluated by the
18 Commissioner under this Article is not required to be reevaluated if that person changes
19 the person's affiliation or employment from one applicant or licensee to another
20 applicant or licensee.

21 (g) After denial, suspension, or termination of a license, and before issuing a new
22 license or reinstating a license, the Commissioner shall review and consider:

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

25 (2) Whether the applicant or licensee has demonstrated that the applicant
26 or licensee had exercised due diligence to avoid the reason or reasons
27 for the denial or termination.

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

30 **"§ 58-89-65. Fees.**

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

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

36 (c) The Commissioner may charge an applicant or licensee reasonable fees for
37 investigations, inspections, examinations, and any other administrative or enforcement
38 responsibilities created under this Article.

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

42 **"§ 58-89-70. License issuance; limitations; term.**

43 (a) The Commissioner shall issue a license to an applicant whom the
44 Commissioner determines has satisfied the requirements of this Article. The

1 Commissioner shall notify an applicant of any deficiency in the application not later
2 than the 30th day after the date on which the Commissioner receives the application.
3 The Commissioner shall issue the license not later than the 90th day after the date on
4 which the completed application is filed with the Commissioner.

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

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

9 (1) A certified audited GAAP financial statement, as required by G.S.
10 58-89-55.

11 (2) Any information required by G.S. 58-89-60(b)(1), (2), (3), (4), (5), or
12 (6) for which there has been a change since the last or initial filing.
13 Any change of officers may subject the licensee to a background
14 investigation of those officers as required by G.S. 58-89-45.

15 (3) Information required by G.S. 58-89-60(b)(8).

16 (4) The annual filing fee.

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

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

22 **"§ 58-89-75. Limited license.**

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

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

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

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

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

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

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

41 **"§ 58-89-80. License not assignable; change of name or location.**

42 (a) A licensee shall not conduct business under any name other than that
43 specified in the license. A license issued under this Article is not assignable. A licensee
44 shall not conduct business under any fictitious or assumed name without prior written

1 authorization from the Commissioner. The Commissioner shall not authorize the use of
2 a name that is so similar to that of a public office or agency or to that of another licensee
3 that the public may be confused or misled by the name's use. A licensee shall not
4 conduct business under more than one name unless the licensee has obtained a separate
5 license for each name.

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

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

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

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

17 (3) A change in the location of business records maintained by the
18 licensee.

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

24 (e) A licensee offering employee leasing services in more than one state may
25 advertise in this State using the name of its parent company or under a trade name,
26 trademark, or service mark. The trade name, trademark, service mark, or parent
27 company name shall be listed on the license in addition to the licensed name used by the
28 licensee in this State.

29 (f) Each written proposal provided to a prospective client company and each
30 contract between a licensee and a client company or assigned employee shall clearly
31 identify the name of the licensee. A proposal or contract may also identify the trade
32 name, trademark, service mark, or parent company name of the licensee. A licensee
33 may use written materials including forms, benefit information, letterhead, and business
34 cards that bear only the trade name, trademark, service mark, or parent company name
35 of the licensee.

36 **"§ 58-89-85. Supervision, rehabilitation, and liquidation.**

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

1 the Commissioner or authorizing the Commissioner to rehabilitate or to liquidate a
2 licensee in accordance with Article 30 of this Chapter.

3 "Part 3. Acquisitions and Mergers.

4 **"§ 58-89-90. Acquisition of control of or merger with professional employer**
5 **organization.**

6 (a) No person other than the issuer shall make a tender offer for or a request or
7 invitation for tenders of, or enter into an agreement to exchange securities, or seek to
8 acquire, or acquire, in the open market or otherwise, any voting security of a
9 professional employer organization domiciled in this State, if after the consummation
10 thereof, the person would, directly or indirectly (or by conversion or by exercise of any
11 right to acquire), be in control of the professional employer organization or any person
12 controlling a professional employer organization unless the offer, request, invitation,
13 agreement, or acquisition is approved by the Commissioner under this section. No such
14 merger or other acquisition of control is effective until the Commissioner approves of
15 the merger or acquisition under this section. The statement containing the information
16 required by this section shall also be filed with the professional employer organization
17 when it is filed with the Commissioner.

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

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

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

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

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

38 (1) After the change in control, the professional employer organization
39 referred to in subsection (a) of this section would not be able to satisfy
40 the requirements for the issuance of a professional employer
41 organization license.

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

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

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

9 (g) The public hearing referred to in subsection (f) of this section shall be held
10 within 120 days after the statement required by subsection (a) of this section is filed,
11 and the Commissioner shall give at least 30 days' notice of the hearing to the person
12 filing the statement, to the professional employer organization, and to any other persons
13 designated by the Commissioner. The Commissioner shall make a determination as
14 expeditiously as is reasonably practicable after the conclusion of the hearing. At the
15 hearing, the person filing the statement, the professional employer organization, any
16 person to whom notice of hearing was sent, and any other person whose interest may be
17 affected by the hearing may present evidence, examine and cross-examine witnesses,
18 and offer oral or written arguments; and in connection therewith may conduct discovery
19 proceedings at any time after the statement is filed with the Commissioner under this
20 section and in the same manner as is presently allowed in the superior courts of this
21 State. In connection with discovery proceedings authorized by this section, the
22 Commissioner may issue such protective orders and other orders governing the timing
23 and scheduling of discovery proceedings as might otherwise have been issued by a
24 superior court of this State in connection with a civil proceeding. If any party fails to
25 make reasonable and adequate response to discovery on a timely basis or fails to comply
26 with any order of the Commissioner with respect to discovery, the Commissioner on the
27 Commissioner's own motion or on motion of any other party or person may order that
28 the hearing be postponed, recessed, convened, or reconvened, as the case may be,
29 following proper completion of discovery and reasonable notice to the person filing the
30 statement, to the professional employer organization, and to any other persons
31 designated by the Commissioner.

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

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

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

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

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

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

7 (l) The courts of this State are vested with jurisdiction over every person not a
8 resident of, or domiciled or authorized to do business in, this State who files a statement
9 with the Commissioner under this section; and each such person is deemed to have
10 performed acts equivalent to and constituting an appointment by that person of the
11 Commissioner to be that person's true and lawful attorney upon whom may be served all
12 legal process in any action, suit, or proceeding arising out of violations of this section.
13 Copies of all such process shall be handled in accordance with the provisions of G.S.
14 58-16-30, 58-16-35, and 58-16-45.

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

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

25 "Part 4. Licensee Duties and Responsibilities.

26 "§ 58-89-95. Agreement; notice.

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

29 (b) The licensee shall give written notice of the agreement as it affects assigned
30 employees to each employee assigned to a client company worksite.

31 (c) The written notice required by subsection (b) of this section shall be given to
32 each assigned employee not later than the first payday after the date on which that
33 individual becomes an assigned employee. The licensee shall give written notice to each
34 employee when the employment status of the employee changes, including when the
35 employee ceases to be an employee of the licensee.

36 "§ 58-89-100. Contract requirements.

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

38 (1) Reserves the right of direction and control over employees assigned to
39 a client company's worksites. However, a client company may retain
40 such sufficient direction and control over the assigned employees as is
41 necessary to conduct the client company's business and without which
42 the client company would be unable to conduct its business, to
43 discharge any fiduciary responsibility that it may have, or to comply

1 with any applicable licensure, regulatory, or statutory requirement of
2 the client company.

3 (2) Assumes responsibility for the payment of wages to the assigned
4 employees without regard to payments by the client company to the
5 licensee.

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

8 (4) Retains the right to hire, fire, discipline, and reassign the assigned
9 employees. However, the client company may accept or cancel the
10 assignment of any assigned employee.

11 (5) Retains the right of direction and control over the adoption of
12 employment and safety policies and the management of workers'
13 compensation claims, claim filings, and related procedures in
14 accordance with applicable federal laws and the laws of this State.

15 **"§ 58-89-105. Employee benefit plans; required disclosure; other reports.**

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

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

22 (1) The type of coverage.

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

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

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

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

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

31 **"§ 58-89-110. Workers' compensation insurance; exclusivity and vicarious**
32 **liability.**

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

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

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

- 1 (3) The workers' compensation carrier shall arrange to have all notices
2 sent to the licensee and to have a single master invoice sent to the
3 licensee.
- 4 (4) The workers' compensation carrier shall arrange to have all notices
5 sent to each client company of the licensee and to have a single master
6 invoice sent to the licensee for all policies covering the client
7 companies of that licensee.
- 8 (5) If a client company leases employees from more than one licensee,
9 there shall be a separate policy for the assigned employees of each
10 licensee.
- 11 (6) The workers' compensation carrier also shall issue a policy covering
12 the internal employees of the licensee unless they are otherwise
13 covered.

14 A license shall not be issued to any professional employer organization unless the
15 organization first files with the Commissioner evidence of workers' compensation
16 coverage for all assigned employees in this State, including those leased from or co-
17 employed with another person, and that the premium paid by the licensee is
18 commensurate with exposure and anticipated claim experience for all employees.

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

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

- 25 (1) The correct name and federal identification number of each client
26 company.
- 27 (2) A listing of all covered employees provided to each client company,
28 by classification code.
- 29 (3) The total eligible wages by classification code and the premiums due
30 to the carrier for the employees provided to each client company.
- 31 (4) Sufficient information to permit the calculation of an experience
32 modification factor for each client company upon termination of the
33 employee leasing relationship. Information accruing during the term of
34 the leasing arrangement that is used to calculate an experience
35 modification factor for a client company upon termination of the
36 leasing relationship shall continue to be used in the future experience
37 ratings of the licensee.

38 (d) Every official form or other document filed with the North Carolina Industrial
39 Commission shall identify by name and address both the licensee and the client
40 company employing the employee who is the subject of the document.

41 (e) A licensee shall within 10 days of initiation or termination of the licensee's
42 relationship with any client company, notify its workers' compensation carrier, the
43 Commissioner, and the North Carolina Industrial Commission of both the initiation and
44 termination of the relationship.

1 (f) If the employee leasing services arrangement with a client company is
2 terminated, the client company shall be assigned an experience modification factor that
3 reflects its experience during the experience period specified by the approved
4 experience rating plan, including, if applicable, experience incurred for assigned
5 employees under the employee leasing services agreement. The licensee shall notify its
6 insurer of its intent to terminate any contractual relationship prior to termination when
7 feasible. When prior notice is not feasible, the licensee shall notify its insurer within
8 five working days following actual termination.

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

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

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

26 (2) A licensee is not liable for the acts, errors, or omissions of a client
27 company or of any assigned employee acting under the sole and
28 exclusive direction and control of the client company. A client
29 company is not liable for the acts, errors, or omissions of a licensee or
30 of any employee of a licensee acting under the sole and exclusive
31 direction or control of the licensee. Nothing in this section limits any
32 contractual liability between a licensee and the client company or
33 limits any liability or responsibility under this Article.

34 (3) Employees assigned to a client company by a licensee are the
35 employees of the client company for the purposes of general liability
36 insurance, automobile insurance, fidelity bonds, surety bonds, and
37 liquor liability insurance carried by the client company unless the
38 employees are included by specific reference in the applicable
39 employment arrangement contract, insurance contract, or bond.

40 **"§ 58-89-115. Health benefit plans.**

41 (a) A licensee shall not sponsor a plan of self-insurance for health benefits except
42 as permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. §
43 1001, et seq.).

1 (b) For purposes of this section, a "plan of self-insurance" includes any
2 arrangement except an arrangement under which an insurance company licensed to
3 write insurance in this State has issued an insurance policy that covers all of the
4 obligations of the health benefits plan.

5 **"§ 58-89-120. Unemployment taxes; payroll.**

6 A licensee is the employer of an assigned employee for purposes of Chapters 95 and
7 96 of the General Statutes. The Employment Security Commission shall cooperate with
8 the Commissioner in the investigation of applicants and licensees and shall provide the
9 Commissioner with access to all relevant records and data in the custody of the
10 Employment Security Commission.

11 **"§ 58-89-125. Posting requirements.**

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

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

18 **"§ 58-89-130. Contractual duties.**

19 (a) Each licensee is responsible for the licensee's contractual duties and
20 responsibilities to manage, maintain, collect, and make timely payments for all of the
21 following:

22 (1) Insurance premiums.

23 (2) Benefit and welfare plans.

24 (3) Other employee withholding.

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

27 (b) The licensee shall notify the client company and the Commissioner in writing
28 about a lapse of any health plan or workers' compensation insurance coverage no later
29 than 10 days after the lapse.

30 (c) The licensee shall send the client company a copy of all transmissions of
31 funds to health insurers and workers' compensation carriers.

32 **"§ 58-89-135. Compliance with other laws.**

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

35 **"§ 58-89-140. Required information.**

36 Each licensee shall:

37 (1) Maintain adequate books and records regarding the licensee's duties
38 and responsibilities, including accounting and employment records
39 relating to all employee leasing services agreement activities, for a
40 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 is exempt from disclosure to persons other than other

1 governmental agencies having a reasonable, legitimate purpose for
2 obtaining the information:

- 3 a. The correct name, address, and telephone number of each client
4 company.
5 b. Each client company contract.
6 c. A listing of each client company by classification code as
7 described in the "Standard Industrial Classification Manual"
8 published by the United States Office of Management and
9 Budget.

10 **"§ 58-89-145. Examinations.**

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

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

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

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

22 **"§ 58-89-150. Agent for service of process.**

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

26 "Part 5. Penalties and Sanctions.

27 **"§ 58-89-155. Grounds for disciplinary action.**

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

30 (1) Being convicted or having an officer or controlling person of the
31 licensee convicted of:

- 32 a. Bribery, fraud, or intentional or material misrepresentation in
33 obtaining or attempting to obtain a license;
34 b. A crime that relates to the operation of a professional employer
35 organization or the ability of the licensee or any officer or
36 controlling person of the licensee to operate a professional
37 employer organization;
38 c. A crime that relates to the classification, misclassification, or
39 underreporting of employees required by State law;
40 d. A crime that relates to the establishment or maintenance of a
41 self-insurance program, whether health insurance, workers'
42 compensation insurance, or other insurance;
43 e. A crime that relates to fraud, deceit, or misconduct in the
44 operation of an employee leasing service; or

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

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

4 (3) Failure to provide notice to the Commissioner and client company
5 within 10 days of the lapse of any insurance coverage pursuant to G.S.
6 58-89-130.

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

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

10 **"§ 58-89-160. Sanctions.**

11 (a) On a finding that a ground for disciplinary action exists under G.S.
12 58-89-155, the Commissioner may suspend or terminate a license, impose a civil
13 penalty, and seek an order of restitution under G.S. 58-2-70.

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

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

20 **"§ 58-89-165. Injunctions; civil remedies; cease and desist orders.**

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

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

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

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

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

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

3 **"§ 58-89-170. Prohibited acts.**

4 No person shall do any of the following:

- 5 (1) Engage in or offer employee leasing services without holding a license
6 under this Article as a professional employer organization.
7 (2) Use the name or title "staff leasing company", "employee leasing
8 company", "licensed staff leasing company", "staff leasing services
9 company", "professional employer organization", or "administrative
10 employer" or otherwise represent that the person is licensed under this
11 Article unless the person holds a license issued under this Article.
12 (3) Represent as the person's own the license of another person or
13 represent that a person is licensed if the person does not hold a license.
14 (4) Give materially false or forged evidence to the Commissioner in
15 connection with obtaining a license or in connection with disciplinary
16 proceedings under this Article.
17 (5) Use or attempt to use a license that has been suspended or terminated.

18 **"§ 58-89-175. Criminal penalty.**

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

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

24 **"§ 114-19.12. Criminal record checks of applicants for licensure as professional**
25 **employer organizations.**

26 The Department of Justice may provide to the North Carolina Department of
27 Insurance from the State and National Repositories of Criminal Histories the criminal
28 history of any applicant for licensure as a professional employer organization under
29 Article 89 of Chapter 58 of the General Statutes. Along with the request, the
30 Department shall provide to the Department of Justice the fingerprints of the applicant,
31 a form signed by the applicant consenting to the criminal record check and use of
32 fingerprints and other identifying information required by the State and National
33 Repositories, and any additional information required by the Department of Justice. The
34 applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a
35 search of the State's criminal history record file and the State Bureau of Investigation
36 may forward a set of fingerprints to the Federal Bureau of Investigation for a national
37 criminal history record check. The Department of Insurance shall keep all information
38 obtained pursuant to this section confidential. The Department of Justice may charge a
39 fee to offset the cost incurred by it to conduct a criminal record check under this section.
40 The fee shall not exceed the actual cost of locating, editing, researching, and retrieving
41 the information."

42 **SECTION 3.** The Department of Insurance shall report to the 2005 General
43 Assembly on the implementation, administration, and enforcement of Article 89 of
44 Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the

1 Department shall recommend any statutory changes required to regulate professional
2 employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

3 **SECTION 4.** Each professional employer organization operating within this
4 State as of January 1, 2003, shall complete its initial licensing not later than 180 days
5 after January 1, 2003. Each professional employer organization not operating within
6 this State as of January 1, 2003, shall complete its initial licensing prior to
7 commencement of operations within this State.

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

12 **SECTION 6.** This act becomes effective January 1, 2003, and applies to any
13 contracts entered into, any business conducted, and any actions taken on or after that
14 date, except that this act shall not become effective until funds have been appropriated
15 to implement the provisions of this act.