

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1029
Commerce Committee Substitute Adopted 5/4/09
House Committee Substitute Favorable 6/10/09
House Committee Substitute #2 Favorable 7/7/09
House Committee Substitute #3 Favorable 8/5/09

Short Title: PEO Amendments.

(Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS, AND TO CLARIFY THE APPLICATION OF TAX CREDITS AND OTHER INCENTIVES TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50(a) reads as rewritten:

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

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

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

SECTION 2. G.S. 58-89A-105 reads as rewritten:

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

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

(1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).

(2) A service corporation organized and licensed under Article 65 of this Chapter.

(3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(a1) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.

(b), (c) Repealed by Session Laws 2008-124, s. 7.4, effective October 1, 2008.



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1 (d) For the purposes of this section, a health insurance plan is fully insured only if all of
2 the benefits provided under the plan are covered by an approved policy issued by one or more
3 of the entities specified in subsection (a) of this section. A health insurance plan is not fully
4 insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

5 (e) Existing licensees shall comply with subsection (a) of this section by October 1,
6 2009. ~~Before~~ If on October 1, 2009, ~~if an existing licensee sponsors and maintains any health~~
7 ~~insurance plan that is not fully insured by one or more of the entities specified in subsection (a)~~
8 ~~of this section, the licensee shall do all of the following:~~

9 (1) ~~Use a third-party administrator licensed or registered under Article 56 of this~~
10 ~~Chapter.~~

11 (2) ~~Hold all plan assets, including participant contributions, in a trust account.~~

12 (3) ~~Provide sound reserves for the plan as determined by generally accepted~~
13 ~~actuarial standards.~~

14 may continue to sponsor and maintain the health insurance plan if it complies with
15 G.S. 58-89A-106."

16 **SECTION 3.** Article 89A of Chapter 58 of the General Statutes is amended by
17 adding the following new sections to read:

18 **"§ 58-89A-106. Health insurance plan requirements.**

19 (a) In order for a licensee to sponsor and maintain a health benefit plan that is not fully
20 insured by one or more of the entities specified in subsection (a) of G.S. 58-89A-109 on and
21 after October 1, 2009, as authorized by subsection (e) of that section, the licensee shall meet all
22 of the requirements listed in this subsection. A health benefit plan developed under this section
23 is not required to provide coverage that meets the requirements of other provisions of this
24 Chapter that mandate either coverage or the offer of coverage by the type or level of health care
25 services or health care provider. The licensee shall:

26 (1) Use a third-party administrator licensed or registered under Article 56 of this
27 Chapter.

28 (2) Hold all health insurance plan assets, including participant contributions, in a
29 separate trust account for use only with the health benefit plan.

30 (3) Provide sound reserves for the health benefit plan that are determined on an
31 annual basis by an actuary who is a member in good standing of the
32 American Academy of Actuaries. The Commissioner may establish, by rule,
33 a process for approving plan reserves.

34 (4) Maintain the health benefit plan for only employees of the licensee or
35 employees of the client company and neither offer nor advertise the health
36 insurance benefit plan to the public generally.

37 (5) Issue to each covered employee a policy, contract, certificate, summary plan
38 description, or other evidence of the benefits and coverages provided. The
39 evidence of benefits and coverages provided shall contain, in boldface print
40 in a conspicuous location, the following statement: "THE BENEFITS
41 UNDER THIS PLAN MAY NOT BE EQUAL TO THE MANDATED
42 BENEFITS REQUIRED OF FULLY INSURED PLANS. THE BENEFITS
43 AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH
44 A SELF-FUNDED HEALTH BENEFIT PLAN ESTABLISHED BY [name
45 of PEO]. EXCESS INSURANCE IS PROVIDED BY AN AUTHORIZED
46 INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL
47 CLAIMS. THE HEALTH BENEFIT PLAN IS NOT PROTECTED BY
48 ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED
49 FINANCIAL INFORMATION IS AVAILABLE FROM YOUR
50 EMPLOYER OR FROM THE [name of PEO]." Any statement required by

- 1 this subsection is not required on identification cards issued to covered
2 employees or other insureds.
- 3 (6) File all contracts with third-party administrators with the Commissioner and
4 report any changes to those contracts to the Commissioner before their
5 implementation.
- 6 (7) Obtain and maintain stop-loss insurance from an insurer authorized to write
7 insurance in this State and that meets the following requirements:
- 8 a. If individual stop-loss insurance, it is actuarially appropriate for the
9 size of the group, surplus, and the expected losses, as determined by
10 a qualified actuary and approved by the Commissioner.
- 11 b. If aggregate stop-loss insurance, it is actuarially appropriate for the
12 size of the group, surplus, and the expected losses as determined by a
13 qualified actuary and approved by the Commissioner. If the licensee
14 is unable to obtain aggregate stop-loss insurance that is actuarially
15 appropriate, the licensee shall maintain at least a thirty percent (30%)
16 lag reserve above expected losses, as determined by a qualified
17 actuary.
- 18 c. If prescribed by the Commissioner, by rule, it satisfies net retention
19 levels in accordance with a PEO's surplus and expected claims.
- 20 (8) File with the Commissioner for information the summary plan description
21 and the evidence of the benefits and coverages provided under the health
22 benefit plan that is issued to the person covered by the health benefit plan.
- 23 (9) Establish and maintain a written plan of operation for the health benefit plan.
- 24 (10) File with the Commissioner the plan of operation for the health benefit plan
25 and any updates to the plan of operation within 30 days of implementation.
- 26 (11) Upon request of the Commissioner, provide information that summarizes
27 paid and incurred expenses and contributions or premiums received and any
28 additional evidence that the PEO's health benefit plan is actuarially sound.
- 29 (b) Notwithstanding Chapter 132 of the General Statutes, all documents filed by a
30 licensee under this section are confidential, are not open for public inspection, and are not
31 discoverable or admissible in evidence in a civil action brought by a party other than the
32 Department against a person regulated by the Department, its directors, officers, or employees,
33 unless the court finds that the interests of justice require that the documents be discoverable or
34 admissible in evidence. The Commissioner, however, may use the contracts filed under this
35 subsection in the furtherance of any regulatory or legal action brought as part of the
36 Commissioner's official duties.
- 37 **§ 58-89A-107. Examinations of self-funded health benefit plans.**
- 38 (a) The Commissioner may conduct an examination of a licensee's self-funded
39 employee benefit plan as often as the Commissioner considers appropriate.
- 40 (b) An examination under this Article shall be conducted in accordance with the
41 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-133.
- 42 (c) In lieu of an examination of any foreign or alien licensee's self-funded employee
43 benefit plan, the Commissioner may, in the Commissioner's discretion, accept an examination
44 report on the licensee's self-funded employee benefit plan prepared by the appropriate regulator
45 for the licensee's state of domicile.
- 46 (d) When making an examination under this section, the Commissioner may retain
47 attorneys, appraisers, independent actuaries, independent certified public accountants, or other
48 professionals and specialists as examiners, the reasonable cost of which shall be borne by the
49 licensee that is the subject of the examination.
- 50 (e) The amount paid by a PEO for an examination of its health benefit plan under this
51 section shall not exceed sixty thousand dollars (\$60,000), unless the PEO and the

1 Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received
2 under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds
3 received under this section shall be used by the Department for offsetting the actual expenses
4 incurred by the Department for examinations under this section."

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

6 **"§ 58-89A-31. Tax credits and other incentives.**

7 For purposes of determination of tax credits and other economic incentives provided by the
8 State or a political subdivision and based on employment, covered employees are considered
9 employees solely of the client. A client shall be entitled to the benefit of any tax credit,
10 economic incentive, or other benefit arising as the result of the employment of covered
11 employees of the client. Each professional employer organization must provide, upon request
12 by a client, employment information that is required by any agency or department of the State
13 or a political subdivision responsible for administration of any tax credit or economic incentive
14 and that is necessary to support a request, claim, application, or other action by a client seeking
15 the tax credit or economic incentive. For purposes of this section, the term "political
16 subdivision" has the same meaning as in G.S. 162A-65(a)(8)."

17 **SECTION 5.** The Department of Insurance shall report to the 2010 General
18 Assembly on the implementation, administration, and enforcement of this act. In its report, the
19 Department shall recommend any statutory changes required to regulate professional employer
20 organizations and enforce the provisions of this act.

21 **SECTION 6.** This act is effective when it becomes law.