

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 475

Short Title: PEO Act Amendments. (Public)

Sponsors: Senator Meredith (Primary Sponsor).

Referred to: Insurance.

March 28, 2013

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.