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SESSION 2013

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SENATE BILL 475  
Insurance Committee Substitute Adopted 5/15/13  
Third Edition Engrossed 5/15/13

Short Title: PEO Act Amendments.

(Public)

Sponsors:

Referred to:

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 G.S. 58-89A-5(8) is repealed.

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

7 "§ 58-89A-50. Surety bond; letter of credit; other deposits.

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

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

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

20 bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred  
21 thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant whose current  
22 assets do not exceed current liabilities pursuant to G.S. 58-89A-60(b) shall file an additional  
23 surety bond or other items set forth in subsection (f) of this section equal to or in excess of  
24 current liabilities less current assets.

25 (b) The surety bond required by this section shall be in a form acceptable to the  
26 Commissioner, issued by an insurer authorized by the Commissioner to write surety business in  
27 this State, and maintained in force while the license remains in effect or any obligations or  
28 liabilities of the applicant, licensee or PEO previously licensed by this State remain  
29 outstanding.

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

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



1       ...."

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

3       "(b) Every applicant shall file with the Commissioner ~~evidence of financial~~  
4 ~~responsibility. Evidence of financial responsibility includes~~ an audited GAAP financial  
5 statement, prepared as of a date not more than 90 days before the date of application that  
6 demonstrates that the applicant or ~~licensee is not in a hazardous financial condition~~ licensee's  
7 current assets exceed current liabilities and attached to which is a separate document signed by  
8 the chief executive and the chief financial officer certifying that (i) each has reviewed the  
9 financial statement; (ii) based on each signatory's knowledge, the financial statement does not  
10 contain any untrue or misleading statement of material fact or omit a fact with respect to the  
11 period covered by the financial statement; and (iii) based on each signatory's knowledge, the  
12 financial statement fairly presents in all material respects the financial condition of the licensee  
13 as of, and for, the period presented in the financial statement.

14       Notwithstanding the requirements of this subsection, the Commissioner may, in the  
15 Commissioner's discretion, accept an audited GAAP financial statement that has been prepared  
16 more than 90 days before submission to the Commissioner if the Commissioner deems such  
17 acceptance appropriate. The Commissioner may, in the Commissioner's discretion, impose  
18 conditions upon such acceptance of financial statements prepared more than 90 days prior to  
19 submission.

20       The audited GAAP financial statement shall be prepared in accordance with generally  
21 accepted accounting principles and audited by an independent certified public accountant  
22 licensed to practice in the jurisdiction in which such accountant is located and shall be without  
23 qualification as to the going concern status of the PEO. A PEO group may submit combined or  
24 consolidated audited financial statements to meet the requirements of this section; except that a  
25 PEO that has not had sufficient operating history to have audited financial statements based  
26 upon at least 12 months of operating history must meet the financial capacity requirements of  
27 this subsection and present financial statements reviewed by a certified public accountant."

28           **SECTION 4.** G.S. 58-89A-85 reads as rewritten:

29       "**§ 58-89A-85. Supervision; rehabilitation; liquidation.**

30       If at any time the Commissioner determines, after notice and an opportunity for the licensee  
31 to be heard, that a licensee (i) has been or will be unable, in such a manner as may endanger the  
32 ability of the licensee, to fully perform its obligations pursuant to this Article or (ii) is ~~bankrupt~~  
33 ~~or in a hazardous financial condition~~, bankrupt, the Commissioner may either (i) commence a  
34 supervision proceeding pursuant to Article 30 of this Chapter or (ii) apply to the Superior Court  
35 of Wake County or to the federal bankruptcy court that has previously taken jurisdiction over  
36 the licensee, if applicable, for an order directing the Commissioner or authorizing the  
37 Commissioner to rehabilitate or to liquidate a licensee in accordance with Article 30 of this  
38 Chapter."

39           **SECTION 5.** G.S. 58-89A-95 reads as rewritten:

40       "**§ 58-89A-95. ~~Agreement; notice.~~ Agreement.**

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

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

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

49           **SECTION 6.** G.S. 58-89A-100 reads as rewritten:

50       "**§ 58-89A-100. Contract requirements.**

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

- 1           (1) ~~That the licensee reserves a right of direction and control over employees~~  
2 ~~assigned to a client company's work sites. However, a~~ Unless otherwise  
3 expressly agreed by a professional employer organization and a client  
4 company in a PEO agreement, the client company may retain such sufficient  
5 retains the exclusive right of direction and control over the assigned  
6 employees as is necessary to conduct the client company's business and  
7 without which the client company would be unable to conduct its business,  
8 to discharge any fiduciary responsibility that it may have, or to comply with  
9 any applicable licensure, regulatory, or statutory requirement of the client  
10 ~~company.~~ company or an assigned employee. The PEO agreement shall  
11 provide that employment responsibilities not allocated to the licensee by the  
12 PEO agreement or this section remain with the client company.
- 13           (2) That the licensee assumes responsibility for the payment of wages to the  
14 assigned employees as agreed to in the PEO agreement.
- 15           (3) That the licensee assumes responsibility for the payment of payroll taxes and  
16 collection of taxes from payroll on assigned employees.
- 17           (4) ~~That the licensee reserves a right to hire, fire, and discipline the assigned~~  
18 ~~employees.~~ That the licensee shall have a right to hire, discipline, and  
19 terminate an assigned employee as may be necessary to fulfill the licensee's  
20 responsibilities under this Chapter and a PEO agreement. The client  
21 company shall have a right to hire, discipline, and terminate an assigned  
22 employee.
- 23           (5) That the licensee retains a right of direction and control over the adoption of  
24 employment policies and the management of workers' compensation claims,  
25 claim filings, and related procedures in accordance with applicable federal  
26 laws and the laws of this State.
- 27           (6) That responsibility to obtain workers' compensation coverage for assigned  
28 employees, from an entity authorized to do business in this State and  
29 otherwise in compliance with all applicable requirements, shall be  
30 specifically allocated in the PEO agreement to either the client company or  
31 the licensee. If the responsibility is allocated to the licensee under any such  
32 agreement, that agreement shall require that the licensee maintain and  
33 provide to the client company, at the termination of the agreement if  
34 requested by the client company, records regarding the loss experience  
35 related to workers' compensation insurance provided to assigned employees  
36 pursuant to the agreement."

37           **SECTION 7.** G.S. 58-89A-145 reads as rewritten:

38           "**§ 58-89A-145. Examinations.**

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

41           (b) An examination under this Article shall be conducted in accordance with the  
42 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

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

46           (d) When making an examination under this Article, 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.~~ may only be recovered pursuant to  
50 G.S. 58-89A-65(d)."

51           **SECTION 8.** G.S. 58-89A-155(a)(4) is repealed.

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**SECTION 9.** This act becomes effective October 1, 2013.