

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 685
Commerce Committee Substitute Adopted 3/24/05
House Committee Substitute Favorable 3/30/05**

Short Title: Revise Professional Employer Organization Act.

(Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

1 AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT
2 BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER
3 CERTAIN CIRCUMSTANCES, ESTABLISHING THE REQUIREMENTS FOR
4 DE MINIMIS REGISTRATION, PROVIDING THAT APPLICANTS FOR
5 LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE
6 COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID
7 BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND
8 ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED
9 UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW
10 GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR
11 ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JUNE 30,
12 2005, PROVIDING FOR CONDITIONAL AUTHORITY FOR A
13 PROFESSIONAL EMPLOYER ORGANIZATION TO OPERATE PENDING
14 CONSIDERATION OF ITS LICENSE APPLICATION UPON A SHOWING OF
15 FINANCIAL STABILITY AND NEED, AUTHORIZING THE USE OF FUNDS
16 FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF
17 PROFESSIONAL EMPLOYER ORGANIZATIONS, AND APPROPRIATING
18 FUNDS TO THE DEPARTMENT FOR REGULATION OF PROFESSIONAL
19 EMPLOYER ORGANIZATIONS.
20

21 The General Assembly of North Carolina enacts:

22 **SECTION 1.** G.S. 58-89A-50 reads as rewritten:

23 "**§ 58-89A-50. Surety bond; letter of credit.**

24 (a) An applicant for licensure shall file with the Commissioner a surety bond in
25 the amount of one hundred thousand dollars (\$100,000) in favor of the State of North
26 Carolina.

27 (b) The surety bond required by this section shall be in a form acceptable to the
28 Commissioner, issued by an insurer authorized by the Commissioner to write surety

1 business in this State, and maintained in force while the license remains in effect or any
2 obligations or liabilities of the applicant, licensee or PEO previously licensed by this
3 State remain outstanding.

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

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

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

14 (e1) A surety bond may be cancelled by the issuer of the bond with respect to
15 future obligations or liabilities upon proper notice pursuant to this section and without
16 regard to approval or acceptance of the Commissioner.

17 (f) In lieu of the surety bond required by this section, an applicant may submit to
18 the Commissioner an irrevocable letter of credit in a form acceptable to the
19 Commissioner issued by a financial institution, the deposits of which are insured by the
20 Federal Deposit Insurance Corporation, or may maintain on deposit with the
21 Commissioner an amount equal to the amount required under subsection (a) of this
22 section in cash or in value of securities of the kind specified in ~~G.S. 58-5-20~~ and subject
23 ~~to the same conditions as the surety bond.~~ G.S. 58-5-20.

24 (g) This section does not apply to persons who are licensed pursuant to the
25 alternative licensing procedures set forth in ~~G.S. 58-89A-76.~~ G.S. 58-89A-76 or to
26 persons who are de minimis registrants pursuant to G.S. 58-89A-75.

27 (h) The license of any licensee that fails to provide and maintain a surety bond,
28 letter of credit, cash, or securities pursuant to this section shall be automatically and
29 immediately suspended, and the licensee shall tender its license to the Commissioner
30 within three days of failure to satisfy this requirement."

31 **SECTION 2.** G.S. 58-89A-65 reads as rewritten:

32 "**§ 58-89A-65. Fees.**

33 (a) Each applicant for a professional employer organization license or ~~limited~~
34 ~~professional employer organization license~~ de minimis registration shall pay to the
35 Commissioner, before the issuance of the license, a nonrefundable application fee of
36 one thousand dollars (\$1,000).

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

39 (c) Each applicant for alternative licensing under G.S. 58-89A-76 and each
40 applicant for renewal of a license provided under G.S. 58-89A-76 shall pay to the
41 Commissioner, before issuance or renewal of the license, a fee of five hundred dollars
42 (\$500.00).

43 (d) When the Commissioner finds that a licensee has committed an act that is a
44 ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has

1 committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes
2 final following the conclusion of all administrative or judicial proceedings, the
3 Commissioner may charge an applicant or licensee reasonable fees to recover the
4 Department's costs associated with investigations, inspections, examinations, and any
5 other administrative or enforcement responsibilities created under this Article.

6 (e) Fees collected by the Commissioner under this Article shall be deposited in
7 the Insurance Regulatory Fund under G.S. 58-6-25 and shall be used to implement this
8 Article."

9 **SECTION 3.** G.S. 58-89A-75 reads as rewritten:

10 "**§ 58-89A-75. Limited license. De minimis registration.**

11 ~~The Commissioner, by rule, shall provide for the issuance of a limited license to a~~
12 ~~person who seeks to offer limited professional employer services in this State. A person~~
13 who seeks to offer limited professional employer services in this State shall be eligible
14 for de minimis registration status upon compliance with this section and may operate as
15 a de minimis registrant in this State upon notification pursuant to this section. A person
16 shall satisfy the requirements for a de minimis registration only if the professional
17 employer organization:

- 18 (1) Does not maintain a physical professional employer organization
19 office located in this State;
- 20 (2) Does not employ salespersons who reside or direct their sales activities
21 in this State;
- 22 (3) Does not employ directly or in common control with another person,
23 as defined in G.S. 58-89A-5(12), more than 50 assigned employees in
24 this State;
- 25 (4) Does not advertise through any media outlet physically located in this
26 State;
- 27 (5) Is a licensed or registered professional employer organization in at
28 least one other state of the United States; and
- 29 (6) Is operated by and under the control of persons of good moral
30 character.

31 A professional employer organization operating under a de minimis registration shall be
32 subject to all of the responsibilities and authority of a licensee under this Article except
33 for G.S. 58-89A-50, 58-89A-60 and 58-89A-70(c), (d), and (e).

34 A person seeking de minimis registration status shall notify the Commissioner, on a
35 form prescribed by the Commissioner, attesting that the professional employer
36 organization meets all of the eligibility requirements for de minimis registration status
37 under this section and additionally provide, at a minimum, the following information:

- 38 (1) The name of the professional employer organization, the address of its
39 principal office, the name of the contact person, and the taxpayer or
40 employer identification number.
- 41 (2) A list by jurisdiction of each name under which the registrant has
42 operated in the preceding five years, including any alternative names,
43 names of predecessors, and, if known, successor business entities;

1 (3) A list of all officers, directors, and controlling person(s) of the
2 registrant and their biographical information in a form to be
3 determined by the Commissioner; and

4 (4) The location of the business records of the person.

5 If the Commissioner finds that the person seeking de minimis registration has not
6 fully met the requirements for de minimis registration, the person shall not be eligible
7 for de minimis registration status and the Commissioner shall notify the person in
8 writing. Within 30 days after service of the notification, the person may make a written
9 demand upon the Commissioner for a review to determine the reasonableness of the
10 Commissioner's action. The review shall be completed without undue delay, and the
11 person shall be notified promptly in writing as to the outcome of the review. Within 30
12 days after service of the notification as to the outcome, the person may make a written
13 demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the
14 General Statutes if the person disagrees with the outcome.

15 If the Commissioner determines that the notification of eligibility for de minimis
16 registration is incomplete, the Commissioner shall notify the person of the deficiency,
17 and the registrant shall be allowed time, not to exceed 15 days from the date of the
18 notice, to correct the deficiency. Failure of the person to correct the deficiency within
19 the 15-day time period shall result in the de minimis being deemed denied. Except as
20 otherwise provided in this section, a person notified of a deficiency under this section
21 may continue to operate while the deficiency is being corrected unless the
22 Commissioner determines that the person is ineligible for de minimis registration status
23 or is otherwise not authorized to operate in this State.

24 After a de minimis registrant's initial notification, a de minimis registrant shall
25 annually notify the Commissioner of its continuing eligibility for de minimis
26 registration status no earlier than January 1 and no later than January 15 of each year.
27 The annual notification shall include the attestation of eligibility for de minimis
28 registration and any change in the information previously provided to the Commissioner
29 under this section."

30 **SECTION 4.** G.S. 58-89A-110(d) reads as rewritten:

31 "(d) A license shall not be issued to any professional employer organization unless
32 (i) the organization first files with the Commissioner evidence of workers' compensation
33 coverage for all assigned employees in this State, including those leased from or
34 coemployed with another person, and that the premium paid by the licensee is person,
35 and (ii) the organization certifies to the Commissioner that it has provided its workers'
36 compensation carrier with proper and necessary documentation to allow the carrier to
37 determine and charge a premium that is commensurate with exposure and anticipated
38 claim experience for all employees covered under policies issued by the carrier in the
39 name of the licensee."

40 **SECTION 5.** Section 2 of S.L. 2004-162 reads as rewritten:

41 "**SECTION 2.** The Department of Insurance shall report to the 2005- 2007 General
42 Assembly on the implementation, administration, and enforcement of Article 89 of
43 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 6.** Section 3 of S.L. 2004-162 reads as rewritten:

4 **"SECTION 3.** A person registered to engage in and offer professional employer
5 services in this State, pursuant to G.S. 58-89-15, on ~~the last day prior to the effective~~
6 ~~date of this act~~ December 31, 2004, may continue to operate pending approval of the
7 person's application for a license as long as the application is filed with the
8 Commissioner no later than ~~April 1, 2005~~ July 1, 2005. If the application for licensure
9 is denied, the person shall cease offering professional employer services in this State. A
10 Except as otherwise provided herein, a person not registered to engage in and offer
11 professional employer services in this State, pursuant to G.S. 58-89-15, on the last day
12 prior to the effective date of this act December 31, 2004, shall not engage in or offer
13 professional employer services in this State until the person has been issued a license
14 under this act.

15 A person that was not registered to engage in and offer professional employer
16 services in this State, pursuant to G.S. 58-89-15 on December 31, 2004, may engage in
17 and offer professional employer services prior to approval of licensure upon satisfying
18 each of the following conditions:

- 19 (1) The person submits with its application an audited GAAP financial
20 statement that has been issued no more than 90 days from the date the
21 application is received by the Commissioner, and the statement is
22 accompanied by an unqualified opinion;
- 23 (2) The person is a licensed or registered professional employer
24 organization in good standing in at least one other state of the United
25 States;
- 26 (3) The person has a client preexisting December 31, 2004, and that client
27 acquires or adds employees in this State on or before July 1, 2005; and
- 28 (4) The person has submitted his or her application for licensure in
29 compliance with the provisions of Article 89A of Chapter 58 of the
30 General Statutes on or before July 1, 2005.

31 The conditional authority to engage in and offer professional employer services
32 pursuant to this provision shall cease upon the earliest of the following: the granting of a
33 license under Article 89A of Chapter 58 of the General Statutes, the denial of a license
34 under Article 89A of Chapter 58 of the General Statutes, or the failure to satisfy any of
35 the conditions upon which the conditional authority exists.

36 Notwithstanding any other provision of this act, an audited GAAP financial
37 statement filed with the Commissioner by an applicant for licensure that otherwise
38 meets the requirements of this act shall be accepted by the Commissioner if it has been
39 filed with the Commissioner on or before June 30, 2005, has been issued within the
40 previous 180 days, and covers a fiscal year that ended December 31, 2004, or is
41 otherwise acceptable to the Commissioner."

42 **SECTION 7.** G.S. 58-6-25(d) is amended by adding a new subdivision to
43 read:

1 "(9) Money appropriated to the Department of Insurance for the regulation
2 of the professional employer organization industry pursuant to Article
3 89A of Chapter 58 of the General Statutes."

4 **SECTION 8.** Effective July 1, 2005, there is appropriated from the
5 Insurance Regulatory Fund established in G.S. 58-6-25 to the Department of Insurance
6 the sum of one hundred fifty thousand dollars (\$150,000) for the 2005-2006 fiscal year
7 for the regulation of the professional employer organization industry pursuant to Article
8 89A of Chapter 58 of the General Statutes.

9 **SECTION 9.** Except as otherwise expressly provided in this act, this act is
10 effective when it becomes law.