

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-124
SENATE BILL 685**

AN ACT TO REVISE THE PROFESSIONAL EMPLOYER ORGANIZATION ACT BY PROVIDING FOR THE CANCELLATION OF SURETY BONDS UNDER CERTAIN CIRCUMSTANCES, ESTABLISHING THE REQUIREMENTS FOR DE MINIMIS REGISTRATION, PROVIDING THAT APPLICANTS FOR LICENSURE ARE NOT REQUIRED TO PROVIDE EVIDENCE TO THE COMMISSIONER THAT THE WORKERS' COMPENSATION PREMIUM PAID BY THE APPLICANT IS COMMENSURATE WITH EXPOSURE AND ANTICIPATED CLAIM EXPERIENCE FOR ALL EMPLOYEES COVERED UNDER POLICIES IN THE NAME OF THE LICENSEE, REVISING THE LAW GOVERNING EVIDENCE OF FINANCIAL RESPONSIBILITY FOR ORGANIZATIONS APPLYING FOR LICENSURE ON OR BEFORE JULY 1, 2005, PROVIDING FOR CONDITIONAL AUTHORITY FOR A PROFESSIONAL EMPLOYER ORGANIZATION TO OPERATE PENDING CONSIDERATION OF ITS LICENSE APPLICATION UPON A SHOWING OF FINANCIAL STABILITY AND NEED, AND AUTHORIZING THE USE OF FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

"§ 58-89A-65. Fees.

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

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

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

(d) When the Commissioner finds that a licensee has committed an act that is a ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes final following the conclusion of all administrative or judicial proceedings, the Commissioner may charge an applicant or licensee reasonable fees to recover the Department's costs associated with investigations, inspections, examinations, and any other administrative or enforcement responsibilities created under this Article.

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

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

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

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

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

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

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

- (1) The name of the professional employer organization, the address of its principal office, the name of the contact person, and the taxpayer or employer identification number;
- (2) A list by jurisdiction of each name under which the registrant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities;
- (3) A list of all officers, directors, and controlling person(s) of the registrant and their biographical information in a form to be determined by the Commissioner; and
- (4) The location of the business records of the person.

If the Commissioner finds that the person seeking de minimis registration has not fully met the requirements for de minimis registration, the person shall not be eligible for de minimis registration status, and the Commissioner shall notify the person in writing. Within 30 days after service of the notification, the person may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the person shall be notified promptly in writing as to the outcome of the review. Within 30

days after service of the notification as to the outcome, the person may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the person disagrees with the outcome.

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

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

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

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

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

"**SECTION 2.** The Department of Insurance shall report to the ~~2005-2007~~ General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 1 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes."

SECTION 6. Effective March 31, 2005, Section 3 of S.L. 2004-162 reads as rewritten:

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

~~prior to the effective date of this act~~ December 31, 2004, shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

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

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

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

Notwithstanding any other provision of this act, an audited GAAP financial statement filed with the Commissioner by an applicant for licensure that otherwise meets the requirements of this act shall be accepted by the Commissioner if it has been filed with the Commissioner on or before July 1, 2005, has been issued within the previous 180 days, and covers a fiscal year that ended December 31, 2004, or is otherwise acceptable to the Commissioner."

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

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

SECTION 8. Except as otherwise expressly provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:12 p.m. this 29th day of June, 2005