

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 1274

Short Title: Regulate Professional Employer Organizations. (Public)

Sponsors: Senators Bingham, Rand; Carrington and Hartsell.

Referred to: Commerce.

June 6, 2002

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE PROFESSIONAL EMPLOYER ORGANIZATIONS.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 58 of the General Statutes is amended by adding the  
5 following new Article to read:

6 "Article 89.  
7 "North Carolina Professional Employer Organization Act.  
8 "Part 1. In General.

9 "§ 58-89-1. Title.

10 This Article shall be known and may be cited as the "North Carolina Professional  
11 Employer Organization Act".

12 "§ 58-89-5. Definitions.

13 In this Article:

- 14 (1) "Applicant" means a person applying for a license under this Article.  
15 (2) "Assigned employee" means an employee who is performing services  
16 for a client company under a contract between a licensee and a client  
17 company in which employment responsibilities are shared. "Assigned  
18 employee" does not include an employee hired to support or  
19 supplement a client company's workforce in a special work situation,  
20 including:  
21 a. An employee absence.  
22 b. A temporary skill shortage.  
23 c. A seasonal workload.  
24 d. A special assignment or project.  
25 (3) "Client company" means a person that contracts with a licensee and is  
26 assigned employees by the licensee under that contract.

- 1           (4)    "Control", including the terms "controlling", "controlled by", and  
2           "under common control with" have the same meanings as in G.S.  
3           58-19-5(2).
- 4           (5)    "Employee leasing services" means an arrangement by which  
5           employees of a licensee are assigned to work at a client company and  
6           in which employment responsibilities are in fact shared by the licensee  
7           and the client company in accordance with G.S. 58-89-100, the  
8           employee's assignment is intended to be of a long-term or continuing  
9           nature, rather than temporary or seasonal in nature, and a majority of  
10           the workforce at a client company work site or a majority of the  
11           personnel of a specialized group within that workforce consists of  
12           assigned employees of the licensee. "Employee leasing services" does  
13           not include temporary employees or similar groups that do not meet  
14           the requirements of this subdivision.
- 15           (6)    "GAAP financial statement" has the same meaning as in G.S.  
16           58-47-60(7).
- 17           (7)    "Hazardous financial condition" has the same meaning as in G.S.  
18           58-47-60(9).
- 19           (8)    "Licensee" means a person licensed under this Article to provide  
20           employee leasing services. The term includes a professional employer  
21           organization group licensed under G.S. 58-89-35.
- 22           (9)    "Person" has the same meaning as in G.S. 58-1-5(9).
- 23           (10)   "Professional employer organization" means a person that offers  
24           employee leasing services and includes "staff leasing services  
25           companies", "employee leasing companies", "staff leasing companies",  
26           and "administrative employers" who offer or propose to offer  
27           employee leasing services in this State.
- 28           (11)   "Professional employer organization group" means a combination of  
29           professional employer organizations that operates under a group  
30           license issued under this Article.
- 31           (12)   "Temporary employees" means persons employed under an  
32           arrangement by which an organization hires its own employees and  
33           assigns them to a client company to support or supplement the client's  
34           workforce in a special work situation, including:
- 35           a.    An employee absence;  
36           b.    A temporary skill shortage;  
37           c.    A seasonal workload; or  
38           d.    A special assignment or project.

39    **§ 58-89-10. North Carolina Professional Employer Organization Advisory**  
40    **Council.**

- 41    (a)   There is created the North Carolina Professional Employer Organization  
42    Advisory Council to advise, consult with, and make recommendations to the

1 Commissioner on the regulation of professional employer organizations, as requested by  
2 the Commissioner. The Council shall consist of seven members, as follows:

- 3 (1) The Commissioner of Labor or the Commissioner's designee, ex  
4 officio.
- 5 (2) The Chair of the North Carolina Industrial Commission or the Chair's  
6 designee, ex officio.
- 7 (3) Two members appointed by the Governor, from a list of five persons  
8 recommended by the North Carolina Industrial Commission.
- 9 (4) One member appointed by the Governor who is not involved directly  
10 or indirectly with the employee leasing services industry.
- 11 (5) One member appointed by the General Assembly in accordance with  
12 G.S. 120-121, upon the recommendation of the President Pro Tempore  
13 of the Senate.
- 14 (6) One member appointed by the General Assembly in accordance with  
15 G.S. 120-121, upon the recommendation of the Speaker of the House  
16 of Representatives.

17 Initial terms begin January 1, 2003.

18 (b) Other than the initial members of the Council, members of the Council shall  
19 serve three-year terms. Initial members of the Council shall serve staggered terms as  
20 follows:

- 21 (1) One member appointed by the Governor from the list recommended by  
22 the North Carolina Industrial Commission and the member appointed  
23 by the General Assembly upon the recommendation of the President  
24 Pro Tempore of the Senate shall serve terms of three years.
- 25 (2) One member appointed by the Governor from the list recommended by  
26 the North Carolina Industrial Commission and the member appointed  
27 by the General Assembly upon the recommendation of the Speaker of  
28 the House of Representatives shall serve terms of two years.
- 29 (3) The member appointed by the Governor who is not directly or  
30 indirectly involved in the employee leasing services industry shall  
31 serve a term of one year.

32 (c) The members of the Council shall elect one of their members to serve as chair  
33 of the Council for a term of one year.

34 (d) The Governor may remove any member of the Council appointed by the  
35 Governor for misconduct, incompetence, or neglect of duty. The General Assembly may  
36 remove any member appointed by it for the same reasons. The appointing authority  
37 making the original appointment shall appoint successors.

38 (e) All vacancies occurring on the Council shall be filled, for the unexpired term,  
39 by the appointing authority making the original appointment. Vacancies in  
40 appointments made by the General Assembly shall be filled in accordance with  
41 G.S. 120-122.

42 (f) The Department of Insurance shall furnish the Council with meeting space  
43 and clerical and other services required by the Council to conduct its business.

1       (g) The members of the Council shall not receive compensation for their service  
2 on the Council.

3 **"§ 58-89-15. Rules.**

4       (a) The Commissioner may adopt rules necessary to implement, administer, and  
5 enforce the provisions of this Article.

6       (b) Each licensee is subject to this Article and to the rules adopted by the  
7 Commissioner.

8       (c) Nothing in this Article preempts the existing statutory or rule-making  
9 authority of any other State agency or entity to regulate employee leasing services in a  
10 manner consistent with the statutory authority of that State agency or entity.

11 **"§ 58-89-20. Interagency cooperation.**

12       A State agency, in performing duties under other law that affects the regulation of  
13 employee leasing services, shall cooperate with the Commissioner as necessary to  
14 implement, administer, and enforce this Article.

15 **"§ 58-89-25. Effect of other law on client companies and assigned employees.**

16       (a) This Article does not exempt a client company of a licensee, or any assigned  
17 employee, from any other license requirements imposed under local, State, or federal  
18 law.

19       (b) An employee who is licensed, registered, or certified under law and who is  
20 assigned to a client company is considered to be an employee of the client company for  
21 the purpose of that license, registration, or certification.

22       (c) A licensee is not engaged in the unauthorized practice of an occupation, trade,  
23 or profession that is licensed, certified, or otherwise regulated by a State agency or other  
24 political subdivision of the State, including a county or city, by entering into an  
25 employee leasing services agreement with a client company and assigned employees.

26       (d) Nothing in this Article or in any employee leasing services contract shall  
27 affect, modify, or amend any collective bargaining agreement, or the rights or  
28 obligations of any client company, professional employer organization, or any assigned  
29 employee under the National Labor Relations Act, 29 U.S.C. § 151, et seq.

30 **"§ 58-89-30. Other provisions of this Chapter.**

31       G.S. 58-2-45, 58-2-50, 58-2-55, 58-2-60, 58-2-65, 58-2-69, 58-2-70, 58-2-75,  
32 58-2-100, 58-2-155, 58-2-163, 58-2-180, 58-2-185, 58-2-200, and 58-3-100 shall apply  
33 to persons licensed under this Article.

34                   "Part 2. License Requirements and Limitations.

35 **"§ 58-89-35. License required; professional employer organization groups.**

36       (a) No person shall engage in or offer employee leasing services in this State  
37 unless the person holds a license issued under this Article.

38       (b) Two or more, but not more than five, professional employer organizations  
39 that are controlled by the same ultimate parent, entity, or persons may be licensed as a  
40 professional employer organization group. A professional employer organization group  
41 may satisfy the reporting and financial requirements of this Article on a consolidated  
42 basis. As a condition of licensure as a professional employer organization group, each

1 professional employer organization that is a member of the group shall guarantee  
2 payment of all financial obligations of every other member.

3 **"§ 58-89-40. General license requirements.**

4 (a) To be qualified to serve as an officer or controlling person of a licensee under  
5 this Article, the officer or controlling person shall be at least 18 years of age, be of good  
6 moral character, and have educational, managerial, or business experience relevant to:

7 (1) Operation of a professional employer organization; or

8 (2) Service as an officer or controlling person of a professional employer  
9 organization.

10 (b) As used in this section, "good moral character" means a personal history of  
11 honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the  
12 rights of others and for the State and federal laws.

13 **"§ 58-89-45. Background investigations.**

14 (a) Before a license is issued to an applicant, each applicant shall furnish the  
15 Commissioner a complete set of fingerprints and a recent passport-size full-face  
16 photograph of each officer and controlling person. Each officer's and controlling  
17 person's fingerprints shall be certified by an authorized law enforcement officer. The  
18 fingerprints of every officer and controlling person shall be forwarded to the State  
19 Bureau of Investigation for a search of the officer's and controlling person's criminal  
20 history record file, if any. If warranted, the State Bureau of Investigation shall forward a  
21 set of the fingerprints to the Federal Bureau of Investigation for a national criminal  
22 history record check. An applicant shall pay the cost of the State and any national  
23 criminal history check of the officers and controlling persons.

24 (b) The Commissioner may deny the initial license of an applicant under this  
25 Article if, after notice to the applicant and an opportunity for a hearing, the  
26 Commissioner finds that an officer or controlling person has:

27 (1) Made any untrue material statement regarding the background or  
28 experience of any officer or controlling person;

29 (2) Violated, or failed to comply with, any employee leasing services law  
30 or any rule or order of the Commissioner or of any other State official  
31 responsible for the regulation of employee leasing services;

32 (3) Obtained or attempted to obtain the license through misrepresentation  
33 or fraud;

34 (4) Been convicted of a felony;

35 (5) Been found to have committed any unfair trade practice or fraud;

36 (6) Used fraudulent, coercive, or dishonest practices, or has acted in a  
37 manner that is incompetent, untrustworthy, or financially irresponsible;  
38 or

39 (7) Held such a position in another professional employer organization  
40 that has had its license or registration suspended, terminated, or  
41 revoked by any state.

42 (c) This section also applies to a change in a controlling party of a professional  
43 employer organization.

1 (d) For purposes of investigation under this section, the Commissioner shall have  
2 all the power conferred by G.S. 58-2-50 and other applicable provisions of this Chapter.

3 **"§ 58-89-50. Surety bond.**

4 (a) An applicant shall acquire and maintain a surety bond for the benefit of the  
5 Commissioner in an amount equal to not less than five percent (5%) of the prior year's  
6 total North Carolina wages, benefits, workers' compensation premiums, and  
7 unemployment compensation contributions, but not less than one hundred thousand  
8 dollars (\$100,000), or such other greater amount as the Commissioner may require. A  
9 copy of the executed bond shall be filed with the Commissioner at the time of  
10 application for licensure.

11 (b) The surety bond required by this section shall be in a form prescribed by the  
12 Commissioner and issued by an insurer authorized by the Commissioner to write surety  
13 business in this State.

14 (c) The surety bond required by this section may be exchanged or replaced with  
15 another surety bond that meets the requirements of this section if 90 days advance  
16 written notice is provided to the Commissioner.

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

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

22 **"§ 58-89-55. Financial responsibility.**

23 (a) For purposes of this section "financial responsibility" means the current and  
24 expected future condition of financial solvency sufficient to support a reasonable  
25 expectation that an applicant or licensee can successfully conduct its business without  
26 jeopardizing the interests of its assigned employees, client companies, or the public.

27 (b) Evidence of financial responsibility shall include a certified audited GAAP  
28 financial statement, prepared as of a date not more than 90 days before the date of  
29 application or filing, that demonstrates that the applicant or licensee is not in a  
30 hazardous financial condition.

31 (c) In order to be in compliance with this section, each licensee may be required  
32 to file with the Commissioner, no later than 45 days after the end of each fiscal quarter:

33 (1) A quarterly GAAP financial statement, prepared in a format similar to  
34 the annual certified audited financial statement; and

35 (2) An attestation, executed by the chief financial officer, the chief  
36 executive officer, and a controlling person of the licensee, that the  
37 licensee has paid all of its obligations for payroll, payroll-related taxes,  
38 workers' compensation insurance, and employee benefits.

39 **"§ 58-89-60. License application.**

40 (a) An applicant for an initial professional employer organization license shall  
41 file with the Commissioner the information required by subsection (b) of this section on  
42 a form prescribed by the Commissioner accompanied by the application fee. No  
43 application is complete until the Commissioner has received all required information.

1       (b) The initial license application shall, at a minimum, be comprised of all of the  
2 following information:

3           (1) The name, organizational structure, and date of organization of the  
4 applicant, the addresses of the principal office and all offices in this  
5 State, the name of the contact person, the type of operations within this  
6 State, and the taxpayer or employer identification number.

7           (2) A list by jurisdiction of each name under which the applicant has  
8 operated in the preceding five years, including any alternative names,  
9 names of predecessors and, if known, successor business entities. The  
10 list required by this subdivision shall include the parent company name  
11 and any trade name, trademark, or service mark of the applicant.

12           (3) A list of all officers and controlling persons of the applicant, their  
13 biographical information, including their management background,  
14 and an affidavit from each attesting to his or her good moral character  
15 and management competence.

16           (4) Documentation that the applicant maintains a place of business in this  
17 State and that the applicant is licensed, if required, in the applicant's  
18 state of domicile.

19           (5) The location of the business records of the applicant.

20           (6) Evidence that the applicant has acquired a surety bond, in accordance  
21 with G.S. 58-89-50, to secure the performance of the applicant's  
22 obligations pursuant to this Article.

23           (7) Evidence of financial responsibility in accordance with G.S. 58-89-55.

24           (8) Evidence that the applicant has paid all of its obligations for payroll,  
25 payroll-related taxes, workers' compensation insurance, and employee  
26 benefits. All disputed amounts shall be disclosed in the application.

27           (9) Any other information the Commissioner deems necessary and  
28 requires by rule to establish that the applicant and the officers and  
29 controlling persons are of good moral character, business integrity, and  
30 financial responsibility.

31       (c) An application for licensure of a professional employer organization group  
32 shall contain the information required by this section for each member of the group.

33       (d) If the Commissioner finds that the applicant has not fully met the  
34 requirements for licensure, the Commissioner shall refuse to issue the license and shall  
35 notify the applicant in writing of the denial, stating the grounds for the denial. The  
36 application may also be denied for any reason for which a license may be suspended or  
37 terminated under G.S. 58-89-155. Within 30 days after service of the notification, the  
38 applicant may make a written demand upon the Commissioner for a review to determine  
39 the reasonableness of the Commissioner's action. The review shall be completed  
40 without undue delay, and the applicant shall be notified promptly in writing as to the  
41 outcome of the review. Within 30 days after service of the notification as to the  
42 outcome, the applicant may make a written demand upon the Commissioner for a

1 hearing under Article 3A of Chapter 150B of the General Statutes if the applicant  
2 disagrees with the outcome.

3 (e) Removal, demotion, or discharge of an officer or a controlling person in  
4 response to an order of the Commissioner of the alleged unsuitability of that officer or  
5 controlling person is an affirmative defense to any claim by that individual based on the  
6 removal, demotion, or discharge.

7 (f) An officer or controlling person who has been evaluated by the  
8 Commissioner under this Article is not required to be reevaluated if that person changes  
9 the person's affiliation or employment from one applicant or licensee to another  
10 applicant or licensee.

11 (g) After denial, suspension, or termination of a license, and before issuing a new  
12 license or reinstating a license, the Commissioner shall review and consider:

13 (1) The extent to which the applicant or licensee has adequately corrected  
14 any problems; and

15 (2) Whether the applicant or licensee has demonstrated that the applicant  
16 or licensee had exercised due diligence to avoid the reason or reasons  
17 for the denial or termination.

18 The applicant or licensee bears the burden of proof with respect to subdivisions (1)  
19 and (2) of this subsection.

20 **"§ 58-89-65. Fees.**

21 (a) Each applicant for an initial or limited professional employer organization  
22 license shall pay to the Commissioner, before the issuance of the license, a  
23 nonrefundable application fee of one thousand dollars (\$1,000).

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

26 (c) The Commissioner may charge an applicant or licensee reasonable fees for  
27 investigations, inspections, examinations, and any other administrative or enforcement  
28 responsibilities created under this Article.

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

32 **"§ 58-89-70. License issuance; limitations; term.**

33 (a) The Commissioner shall issue a license to an applicant whom the  
34 Commissioner determines has satisfied the requirements of this Article. The  
35 Commissioner shall notify an applicant of any deficiency in the application not later  
36 than the 30th day after the date on which the Commissioner receives the application.  
37 The Commissioner shall issue the license not later than the 90th day after the date on  
38 which the completed application is filed with the Commissioner.

39 (b) A license issued by the Commissioner under this Article shall remain in effect  
40 until terminated or surrendered.

41 (c) Within 90 days after the end of each fiscal year, each licensee shall file with  
42 the Commissioner all of the following information:

- 1           (1) A certified audited GAAP financial statement, as required by G.S.  
2           58-89-55.
- 3           (2) Any information required by G.S. 58-89-60(b)(1), (2), (3), (4), (5),  
4           or (6) for which there has been a change since the last or initial filing.  
5           Any change of officers may subject the licensee to a background  
6           investigation of those officers as required by G.S. 58-89-45.
- 7           (3) Information required by G.S. 58-89-60(b)(8).
- 8           (4) The annual filing fee.
- 9           (5) Any other information the Commissioner determines is needed for the  
10          review of a licensee.

11          (d) By obtaining licensure under this Article, the controlling persons of a licensee  
12 certify, under penalty of law, their compliance with the requirements of licensure and of  
13 operation as a professional employer organization pursuant to this Article.

14 **"§ 58-89-75. Limited license.**

15          (a) The Commissioner by rule shall provide for the issuance of a limited license  
16 to a person who seeks to offer limited employee leasing services in this State and is  
17 domiciled in another state and licensed or registered as a professional employer  
18 organization in that state.

19          (b) For purposes of this section, a professional employer organization is  
20 considered to be offering limited employee leasing services if the professional employer  
21 organization does all of the following:

- 22           (1) Employs fewer than 50 assigned employees in this State at any one  
23           time.
- 24           (2) Does not provide assigned employees to a client company based or  
25           domiciled in this State.
- 26           (3) Does not maintain an office in this State or solicit client companies  
27           located or domiciled in this State.

28          (c) A professional employer organization that offers limited employee leasing  
29 services shall complete the application forms and pay the fees for a limited license as  
30 prescribed by the Commissioner.

31          (d) The Commissioner may use information obtained from regulatory agencies in  
32 other states in evaluating an applicant for a limited license.

33 **"§ 58-89-80. License not assignable; change of name or location.**

34          (a) A licensee shall not conduct business under any name other than that  
35 specified in the license. A license issued under this Article is not assignable. A licensee  
36 shall not conduct business under any fictitious or assumed name without prior written  
37 authorization from the Commissioner. The Commissioner shall not authorize the use of  
38 a name that is so similar to that of a public office or agency or to that of another licensee  
39 that the public may be confused or misled by the name's use. A licensee shall not  
40 conduct business under more than one name unless the licensee has obtained a separate  
41 license for each name.

42          (b) Except as provided in this subsection, a licensee may change the licensee's  
43 licensed name only once in a calendar year by notifying the Commissioner and paying a

1 fee for the change of name. The fee for a name change shall be fifty dollars (\$50.00). A  
2 licensee may change the licensee's name without the payment of the name change fee if  
3 the name change is submitted with the information required by G.S. 58-89-70(c). If a  
4 licensee has changed its name once during a calendar year, the licensee shall not change  
5 its name again unless the name change is approved by the Commissioner.

6 (c) A licensee shall notify the Commissioner in writing within 30 days after any  
7 change in the status of the licensee, including:

8 (1) Any change in the location of the licensee's primary business office;

9 (2) The addition of more business offices; or

10 (3) A change in the location of business records maintained by the  
11 licensee.

12 (d) A licensee may amend the name specified in its license to add a trade name,  
13 trademark, service mark, or parent company name. An amendment made under this  
14 subsection shall comply with the requirements imposed under subsection (a) of this  
15 section. The Commissioner shall charge a fee of fifty dollars (\$50.00) for processing the  
16 amendment.

17 (e) A licensee offering employee leasing services in more than one state may  
18 advertise in this State using the name of its parent company or under a trade name,  
19 trademark, or service mark. The trade name, trademark, service mark, or parent  
20 company name shall be listed on the license in addition to the licensed name used by the  
21 licensee in this State.

22 (f) Each written proposal provided to a prospective client company and each  
23 contract between a licensee and a client company or assigned employee shall clearly  
24 identify the name of the licensee. A proposal or contract may also identify the trade  
25 name, trademark, service mark, or parent company name of the licensee. A licensee  
26 may use written materials including forms, benefit information, letterhead, and business  
27 cards that bear only the trade name, trademark, service mark, or parent company name  
28 of the licensee.

29 **"§ 58-89-85. Supervision, rehabilitation, and liquidation.**

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

39 "Part 3. Acquisitions and Mergers.

40 **"§ 58-89-90. Acquisition of control of or merger with professional employer**  
41 **organization.**

42 (a) No person other than the issuer shall make a tender offer for or a request or  
43 invitation for tenders of, or enter into an agreement to exchange securities, or seek to

1 acquire, or acquire, in the open market or otherwise, any voting security of a  
2 professional employer organization domiciled in this State, if after the consummation  
3 thereof, the person would, directly or indirectly (or by conversion or by exercise of any  
4 right to acquire), be in control of the professional employer organization or any person  
5 controlling a professional employer organization unless the offer, request, invitation,  
6 agreement, or acquisition is approved by the Commissioner under this section. No such  
7 merger or other acquisition of control is effective until the Commissioner approves of  
8 the merger or acquisition under this section. The statement containing the information  
9 required by this section shall also be filed with the professional employer organization  
10 when it is filed with the Commissioner.

11 (b) For the purposes of this section, a "professional employer organization"  
12 includes any person controlling a professional employer organization. Further, for the  
13 purposes of this section, "person" does not include any securities broker holding, in the  
14 usual and customary broker's function, less than twenty percent (20%) of the voting  
15 securities of a professional employer organization or of any person that controls a  
16 professional employer organization.

17 (c) Any acquisition of control of a professional employer organization shall be  
18 completed not later than 90 days after the date of the Commissioner's order approving  
19 the acquisition under this section, unless the Commissioner grants an extension in  
20 writing on a showing of good cause for the delay.

21 (d) If the deadlines for completion in subsection (c) of this section are not met,  
22 the person seeking to acquire control of the professional employer organization shall  
23 resubmit the statement required by subsection (e) of this section, and the Commissioner  
24 may reconsider approval of acquisition of control under this section.

25 (e) The statement to be filed with the Commissioner under subsection (a) of this  
26 section shall be made under oath or affirmation and shall include all information  
27 required by the Commissioner pursuant to rules adopted by the Commissioner.

28 (f) The Commissioner shall approve any merger or other acquisition of control  
29 referred to in subsection (a) of this section unless, after a public hearing thereon, the  
30 Commissioner finds any of the following:

31 (1) After the change in control, the professional employer organization  
32 referred to in subsection (a) of this section would not be able to satisfy  
33 the requirements for the issuance of a professional employer  
34 organization license.

35 (2) The financial condition of any acquiring party might jeopardize the  
36 financial stability of the professional employer organization or  
37 prejudice the interest of its client companies or assigned employees.

38 (3) The competence, experience, and integrity of those persons who would  
39 control the operation of the professional employer organization are  
40 such that it would not be in the interests of the professional employer  
41 organization's client companies, assigned employees, and of the public  
42 to permit the merger or acquisition of control.

1           (4) The acquisition is likely to be hazardous or prejudicial to members of  
2           the public who enter into arrangements with professional employer  
3           organizations.

4           (g) The public hearing referred to in subsection (f) of this section shall be held  
5 within 120 days after the statement required by subsection (a) of this section is filed,  
6 and the Commissioner shall give at least 30 days' notice of the hearing to the person  
7 filing the statement, to the professional employer organization, and to any other persons  
8 designated by the Commissioner. The Commissioner shall make a determination as  
9 expeditiously as is reasonably practicable after the conclusion of the hearing. At the  
10 hearing, the person filing the statement, the professional employer organization, any  
11 person to whom notice of hearing was sent, and any other person whose interest may be  
12 affected by the hearing may present evidence, examine and cross-examine witnesses,  
13 and offer oral or written arguments; and in connection therewith may conduct discovery  
14 proceedings at any time after the statement is filed with the Commissioner under this  
15 section and in the same manner as is presently allowed in the superior courts of this  
16 State. In connection with discovery proceedings authorized by this section, the  
17 Commissioner may issue such protective orders and other orders governing the timing  
18 and scheduling of discovery proceedings as might otherwise have been issued by a  
19 superior court of this State in connection with a civil proceeding. If any party fails to  
20 make reasonable and adequate response to discovery on a timely basis or fails to comply  
21 with any order of the Commissioner with respect to discovery, the Commissioner on the  
22 Commissioner's own motion or on motion of any other party or person may order that  
23 the hearing be postponed, recessed, convened, or reconvened, as the case may be,  
24 following proper completion of discovery and reasonable notice to the person filing the  
25 statement, to the professional employer organization, and to any other persons  
26 designated by the Commissioner.

27           (h) The Commissioner may retain, at the acquiring person's expense, any  
28 attorneys, economists, accountants, or other experts not otherwise a part of the  
29 Commissioner's staff as may be reasonably necessary to assist the Commissioner in  
30 reviewing the proposed acquisition of control.

31           (i) The expenses of mailing any notices and other materials required by this  
32 section shall be borne by the person making the filing. As security for the payment of  
33 such expenses, the person shall file with the Commissioner an acceptable bond or other  
34 deposit in an amount to be determined by the Commissioner.

35           (j) The provisions of this section do not apply to any offer, request, invitation,  
36 agreement, or acquisition that the Commissioner by order exempts therefrom as (i) not  
37 having been made or entered into for the purpose and not having the effect of changing  
38 or influencing the control of a professional employer organization, or (ii) as otherwise  
39 not contemplated within the purposes of this section.

40           (k) The following are violations of this section:

41           (1) The failure to file any statement, amendment, or other material  
42 required to be filed pursuant to subsection (a) or (e) of this section.

1           (2) The effectuation or any attempt to effectuate an acquisition of control  
2           of or merger with a professional employer organization, unless the  
3           Commissioner has approved the acquisition or merger.

4           (1) The courts of this State are vested with jurisdiction over every person not a  
5           resident of, or domiciled or authorized to do business in, this State who files a statement  
6           with the Commissioner under this section; and each such person is deemed to have  
7           performed acts equivalent to and constituting an appointment by that person of the  
8           Commissioner to be that person's true and lawful attorney upon whom may be served all  
9           legal process in any action, suit, or proceeding arising out of violations of this section.  
10          Copies of all such process shall be handled in accordance with the provisions of G.S.  
11          58-16-30, 58-16-35, and 58-16-45.

12          (m) Any professional employer organization that is domiciled in another state,  
13          and subject to licensure or registration in such state and subject to substantially similar  
14          requirements, shall be exempt from the requirements of subsection (a) of this section  
15          and shall file the information required by rules adopted by the Commissioner under  
16          subsection (n) of this section.

17          (n) The Commissioner shall adopt by rule the information to be filed with the  
18          Commissioner for any acquisition of control of or merger with a foreign professional  
19          employer organization. For the purposes of this section, "foreign professional employer  
20          organization" means a person incorporated or organized under the laws of the United  
21          States or of any jurisdiction within the United States other than this State.

22                                    "Part 4. Licensee Duties and Responsibilities.

23          "**§ 58-89-95. Agreement; notice.**"

24          (a) A licensee shall establish the terms of an employee leasing services  
25          agreement by a written contract between the licensee and the client company.

26          (b) The licensee shall give written notice of the agreement as it affects assigned  
27          employees to each employee assigned to a client company worksite.

28          (c) The written notice required by subsection (b) of this section shall be given to  
29          each assigned employee not later than the first payday after the date on which that  
30          individual becomes an assigned employee. The licensee shall give written notice to each  
31          employee when the employment status of the employee changes, including when the  
32          employee ceases to be an employee of the licensee.

33          "**§ 58-89-100. Contract requirements.**"

34          A contract between a licensee and a client company shall provide that the licensee:

35               (1) Reserves the right of direction and control over employees assigned to  
36               a client company's worksites. However, a client company may retain  
37               such sufficient direction and control over the assigned employees as is  
38               necessary to conduct the client company's business and without which  
39               the client company would be unable to conduct its business, to  
40               discharge any fiduciary responsibility that it may have, or to comply  
41               with any applicable licensure, regulatory, or statutory requirement of  
42               the client company.

- 1           (2) Assumes responsibility for the payment of wages to the assigned  
2 employees without regard to payments by the client company to the  
3 licensee.
- 4           (3) Assumes responsibility for the payment of payroll taxes and collection  
5 of taxes from payroll on assigned employees.
- 6           (4) Retains the right to hire, fire, discipline, and reassign the assigned  
7 employees. However, the client company may accept or cancel the  
8 assignment of any assigned employee.
- 9           (5) Retains the right of direction and control over the adoption of  
10 employment and safety policies and the management of workers'  
11 compensation claims, claim filings, and related procedures in  
12 accordance with applicable federal laws and the laws of this State.

13 **"§ 58-89-105. Employee benefit plans; required disclosure; other reports.**

14           (a) A licensee may sponsor and maintain employee benefit plans for the benefit  
15 of assigned employees. A client company may include assigned employees in any  
16 benefit plan sponsored by the client company.

17           (b) With respect to any insurance or benefit plan provided by a licensee for the  
18 benefit of its assigned employees, a licensee shall disclose all of the following  
19 information to the Commissioner, each client company, and its assigned employees:

- 20               (1) The type of coverage.
- 21               (2) The identity of each insurer for each type of coverage.
- 22               (3) The amount of benefits provided for each type of coverage and to  
23 whom or in whose behalf benefits are to be paid.
- 24               (4) The policy limits on each insurance policy.
- 25               (5) Whether the coverage is fully insured, partially insured, or fully  
26 self-funded.

27           (c) The Commissioner by rule may require a licensee to file other reports that are  
28 reasonably necessary for the administration and enforcement of this Article.

29 **"§ 58-89-110. Workers' compensation insurance; exclusivity and vicarious**  
30 **liability.**

31           (a) A licensee shall be responsible for providing workers' compensation  
32 insurance coverage through a licensed insurance carrier or a licensed self-insurance plan  
33 for the licensee's assigned employees as provided in Chapter 97 of the General Statutes,  
34 the Workers' Compensation Act. Workers' compensation coverage shall be obtained on  
35 a multiple coordinated policy basis as follows:

- 36               (1) Each client company shall have its own policy covering its assigned  
37 employees required to be covered pursuant to the laws of this State.
- 38               (2) All assigned risk policies for client companies of the same licensee  
39 shall be assigned to one workers' compensation carrier in the State and  
40 in other states to the extent possible.
- 41               (3) The workers' compensation carrier shall arrange to have all notices  
42 sent to the licensee and to have a single master invoice sent to the  
43 licensee.

1           (4) The workers' compensation carrier shall arrange to have all notices  
2 sent to each client company of the licensee and to have a single master  
3 invoice sent to the licensee for all policies covering the client  
4 companies of that licensee.

5           (5) If a client company leases employees from more than one licensee,  
6 there shall be a separate policy for the assigned employees of each  
7 licensee.

8           (6) The workers' compensation carrier also shall issue a policy covering  
9 the internal employees of the licensee unless they are otherwise  
10 covered.

11           A license shall not be issued to any professional employer organization unless the  
12 organization first files with the Commissioner evidence of workers' compensation  
13 coverage for all assigned employees in this State, including those leased from or co-  
14 employed with another person, and that the premium paid by the licensee is  
15 commensurate with exposure and anticipated claim experience for all employees.

16           (b) If a licensee maintains workers' compensation insurance, the licensee shall  
17 pay workers' compensation insurance premiums based on the experience rating of the  
18 client company for the first two years the client company has a contract with the  
19 licensee and as further provided by rule by the Commissioner.

20           (c) Each licensee shall maintain and make available to its workers' compensation  
21 carrier on an annual basis the following information:

22           (1) The correct name and federal identification number of each client  
23 company.

24           (2) A listing of all covered employees provided to each client company,  
25 by classification code.

26           (3) The total eligible wages by classification code and the premiums due  
27 to the carrier for the employees provided to each client company.

28           (4) Sufficient information to permit the calculation of an experience  
29 modification factor for each client company upon termination of the  
30 employee leasing relationship. Information accruing during the term of  
31 the leasing arrangement that is used to calculate an experience  
32 modification factor for a client company upon termination of the  
33 leasing relationship shall continue to be used in the future experience  
34 ratings of the licensee.

35           (d) Every official form or other document filed with the North Carolina Industrial  
36 Commission shall identify by name and address both the licensee and the client  
37 company employing the employee who is the subject of the document.

38           (e) A licensee shall within 10 days of initiation or termination of the licensee's  
39 relationship with any client company, notify its workers' compensation carrier, the  
40 Commissioner, and the North Carolina Industrial Commission of both the initiation and  
41 termination of the relationship.

42           (f) If the employee leasing services arrangement with a client company is  
43 terminated, the client company shall be assigned an experience modification factor that

1 reflects its experience during the experience period specified by the approved  
2 experience rating plan, including, if applicable, experience incurred for assigned  
3 employees under the employee leasing services agreement. The licensee shall notify its  
4 insurer of its intent to terminate any contractual relationship prior to termination when  
5 feasible. When prior notice is not feasible, the licensee shall notify its insurer within  
6 five working days following actual termination.

7 (g) A client company shall not enter into an employee leasing services agreement  
8 or be eligible for workers' compensation coverage in the voluntary market if the client-  
9 workers' company owes its current or prior carrier any premium for workers'  
10 compensation insurance, or if the client company owes its current or prior professional  
11 employer organization amounts due under the employee leasing services agreement,  
12 except for premiums or amounts due that are subject to dispute. For the purposes of this  
13 section and compliance with other laws and rules, a licensee may rely on a sworn  
14 statement by the client company that the client company has met any and all prior  
15 premium or fee obligations, unless the licensee has actual knowledge to the contrary.

16 (h) Subject to any contrary provisions of the contract between the licensee and  
17 the client company, the employee leasing services agreement that exists between the  
18 licensee and client company shall be interpreted for purposes of insurance, bonding, and  
19 employer's liability as follows:

20 (1) The licensee shall be entitled along with the client company to the  
21 exclusivity of the remedy under both the workers' compensation and  
22 employers' liability provision of the workers' compensation policy or  
23 plan that either party has secured.

24 (2) A licensee is not liable for the acts, errors, or omissions of a client  
25 company or of any assigned employee acting under the sole and  
26 exclusive direction and control of the client company. A client  
27 company is not liable for the acts, errors, or omissions of a licensee or  
28 of any employee of a licensee acting under the sole and exclusive  
29 direction or control of the licensee. Nothing in this section limits any  
30 contractual liability between a licensee and the client company or  
31 limits any liability or responsibility under this Article.

32 (3) Employees assigned to a client company by a licensee are the  
33 employees of the client company for the purposes of general liability  
34 insurance, automobile insurance, fidelity bonds, surety bonds, and  
35 liquor liability insurance carried by the client company unless the  
36 employees are included by specific reference in the applicable  
37 employment arrangement contract, insurance contract, or bond.

38 **§ 58-89-115. Health benefit plans.**

39 (a) A licensee shall not sponsor a plan of self-insurance for health benefits except  
40 as permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C.  
41 Section 1001 et seq.).

42 (b) For purposes of this section, a "plan of self-insurance" includes any  
43 arrangement except an arrangement under which an insurance company licensed to

1 write insurance in this State has issued an insurance policy that covers all of the  
2 obligations of the health benefits plan.

3 **"§ 58-89-120. Unemployment taxes; payroll.**

4 A licensee is the employer of an assigned employee for purposes of Chapters 95 and  
5 96 of the General Statutes. The Employment Security Commission shall cooperate with  
6 the Commissioner in the investigation of applicants and licensees and shall provide the  
7 Commissioner with access to all relevant records and data in the custody of the  
8 Employment Security Commission.

9 **"§ 58-89-125. Posting requirements.**

10 (a) Each licensee shall post the license issued under this Article in a conspicuous  
11 place in the licensee's principal place of business in this State.

12 (b) Each licensee shall display, in a place that is in clear and unobstructed public  
13 view, a notice stating that the business operated at the location is licensed and regulated  
14 by the Commissioner and that any questions or complaints may be directed to the  
15 Commissioner.

16 **"§ 58-89-130. Contractual duties.**

17 (a) Each licensee is responsible for the licensee's contractual duties and  
18 responsibilities to manage, maintain, collect, and make timely payments for all of the  
19 following:

20 (1) Insurance premiums.

21 (2) Benefit and welfare plans.

22 (3) Other employee withholding.

23 (4) Any other expressed responsibility within the scope of the contract for  
24 fulfilling the duties imposed under this Article.

25 (b) The licensee shall notify the client company and the Commissioner in writing  
26 about a lapse of any health plan or workers' compensation insurance coverage no later  
27 than 10 days after the lapse.

28 (c) The licensee shall send the client company a copy of all transmissions of  
29 funds to health insurers and workers' compensation carriers.

30 **"§ 58-89-135. Compliance with other laws.**

31 Each licensee shall comply with all appropriate State and federal laws relating to  
32 reporting, sponsoring, filing, and maintaining benefit and welfare plans.

33 **"§ 58-89-140. Required information.**

34 Each licensee shall:

35 (1) Maintain adequate books and records regarding the licensee's duties  
36 and responsibilities, including accounting and employment records  
37 relating to all employee leasing services agreement activities, for a  
38 minimum of three years.

39 (2) Maintain and make available at all times to the Commissioner the  
40 following information, which shall be treated as proprietary and  
41 confidential and is exempt from disclosure to persons other than other  
42 governmental agencies having a reasonable, legitimate purpose for  
43 obtaining the information:

- 1                   a.     The correct name, address, and telephone number of each client  
2                   company.  
3                   b.     Each client company contract.  
4                   c.     A listing of each client company by classification code as  
5                   described in the "Standard Industrial Classification Manual"  
6                   published by the United States Office of Management and  
7                   Budget.

8     **"§ 58-89-145. Examinations.**

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

11           (b)     An examination under this Article shall be conducted in accordance with the  
12            examination law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134.

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

16           (d)     When making an examination under this Article, the Commissioner may  
17            retain attorneys, appraisers, independent actuaries, independent certified public  
18            accountants, or other professionals and specialists as examiners, the reasonable cost of  
19            which shall be borne by the licensee that is the subject of the examination.

20     **"§ 58-89-150. Agent for service of process.**

21            Each resident licensee shall maintain a registered agent for the service of process in  
22            this State. The Commissioner shall be each nonresident licensee's agent for service of  
23            process as provided in Article 16 of this Chapter.

24                                    "Part 5. Penalties and Sanctions.

25     **"§ 58-89-155. Grounds for disciplinary action.**

26           (a)     The Commissioner may take disciplinary action against a licensee on any of  
27            the following grounds:

28                 (1)     Being convicted or having an officer or controlling person of the  
29                 licensee convicted of:

30                   a.     Bribery, fraud, or intentional or material misrepresentation in  
31                   obtaining or attempting to obtain a license;

32                   b.     A crime that relates to the operation of a professional employer  
33                   organization or the ability of the licensee or any officer or  
34                   controlling person of the licensee to operate a professional  
35                   employer organization;

36                   c.     A crime that relates to the classification, misclassification, or  
37                   underreporting of employees required by State law;

38                   d.     A crime that relates to the establishment or maintenance of a  
39                   self-insurance program, whether health insurance, workers'  
40                   compensation insurance, or other insurance;

41                   e.     A crime that relates to fraud, deceit, or misconduct in the  
42                   operation of an employee leasing service; or

43                   f.     A crime that involves dishonesty or breach of trust.

1           (2) Engaging in employee leasing services or offering to engage in the  
2 provision of employee leasing services without a license.

3           (3) Failure to provide notice to the Commissioner and client company  
4 within 10 days of the lapse of any insurance coverage pursuant to G.S.  
5 58-89-130.

6           (4) Failure to provide the notice required by G.S. 58-50-40.

7           (b) For purposes of this section, a conviction includes an adjudication of guilt, a  
8 plea of guilty, and a plea of nolo contendere.

9 **"§ 58-89-160. Sanctions.**

10           (a) On a finding that a ground for disciplinary action exists under G.S.  
11 58-89-155, the Commissioner may suspend or terminate a license, impose a civil  
12 penalty, and seek an order of restitution under G.S. 58-2-70.

13           (b) On termination of a license, the licensee shall immediately return the  
14 terminated license to the Commissioner.

15           (c) Any disciplinary action taken, any temporary or permanent termination of a  
16 license, or any determination that an officer or controlling person is unqualified shall be  
17 made by the Commissioner subject to Article 3A of Chapter 150B of the General  
18 Statutes.

19 **"§ 58-89-165. Injunctions; civil remedies; cease and desist orders.**

20           (a) In addition to the penalties and other enforcement provisions of this Article, if  
21 any person violates this Article or any rule implementing this Article, the Commissioner  
22 may seek an injunction in a court of competent jurisdiction and may apply for  
23 temporary and permanent orders that the Commissioner determines are necessary to  
24 restrain the person from committing the violation.

25           (b) Any person damaged by the acts of a person in violation of this Article may  
26 bring a civil action against the person committing the violation in a court of competent  
27 jurisdiction.

28           (c) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and  
29 desist order upon a person that violates any provision of this Article, any rule or order  
30 adopted by the Commissioner, or any written agreement entered into with the  
31 Commissioner. The cease and desist order may be subject to judicial review under G.S.  
32 58-63-35.

33           (d) When the Commissioner finds that an activity in violation of this Article  
34 presents an immediate danger to the public that requires an immediate final order, the  
35 Commissioner may issue an emergency cease and desist order reciting with particularity  
36 the facts underlying the findings. The emergency cease and desist order is effective  
37 immediately upon service of a copy of the order on the respondent and remains effective  
38 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,  
39 the emergency cease and desist order remains effective, absent an order by a court of  
40 competent jurisdiction in accordance with G.S. 58-63-35.

41           (e) In addition to the penalties and other enforcement provisions of this Article,  
42 any person who violates this Article is subject to G.S. 58-2-70.

1 (f) The Commissioner is not required to post a bond for injunctive relief under  
2 this section.

3 **"§ 58-89-170. Prohibited acts.**

4 No person shall do any of the following:

- 5 (1) Engage in or offer employee leasing services without holding a license  
6 under this Article as a professional employer organization.  
7 (2) Use the name or title "staff leasing company", "employee leasing  
8 company", "licensed staff leasing company", "staff leasing services  
9 company", "professional employer organization", or "administrative  
10 employer" or otherwise represent that the person is licensed under this  
11 Article unless the person holds a license issued under this Article.  
12 (3) Represent as the person's own the license of another person or  
13 represent that a person is licensed if the person does not hold a license.  
14 (4) Give materially false or forged evidence to the Commissioner in  
15 connection with obtaining a license or in connection with disciplinary  
16 proceedings under this Article.  
17 (5) Use or attempt to use a license that has been suspended or terminated.

18 **"§ 58-89-175. Criminal penalty.**

19 A person who violates G.S. 58-89-170 commits a Class H felony. Any officer or  
20 controlling person who willfully violates any provision of this Article may be subject to  
21 any and all criminal penalties available under State law."

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

27 **SECTION 3.** Each professional employer organization operating within this  
28 State as of January 1, 2003, shall complete its initial licensing not later than 180 days  
29 after January 1, 2003. Each professional employer organization not operating within  
30 this State as of January 1, 2003, shall complete its initial licensing prior to  
31 commencement of operations within this State.

32 **SECTION 4.** If any section or provision of this act is declared  
33 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the  
34 validity of the act as a whole or any part other than the part so declared to be  
35 unconstitutional, preempted, or otherwise invalid.

36 **SECTION 5.** This act becomes effective January 1, 2003, and applies to any  
37 contracts entered into, any business conducted, and any actions taken on or after that  
38 date, except that this act shall not become effective until funds have been appropriated  
39 to implement the provisions of this act.