

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

S

4

SENATE BILL 685  
Commerce Committee Substitute Adopted 3/24/05  
House Committee Substitute Favorable 3/30/05  
House Committee Substitute #2 Favorable 5/16/05

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 JULY 1,  
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, AND AUTHORIZING THE USE OF  
16 FUNDS FROM THE INSURANCE REGULATORY FUND FOR REGULATION  
17 OF PROFESSIONAL EMPLOYER ORGANIZATIONS.  
18

19 The General Assembly of North Carolina enacts:

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

21 "**§ 58-89A-50. Surety bond; letter of credit.**

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

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  
27 business in this State, and maintained in force while the license remains in effect or any

1 obligations or liabilities of the applicant, licensee or PEO previously licensed by this  
2 State remain outstanding.

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

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

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

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

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

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

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

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

31 **"§ 58-89A-65. Fees.**

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

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

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

42 (d) When the Commissioner finds that a licensee has committed an act that is a  
43 ground for disciplinary violation under G.S. 58-89A-155 or that a licensee has  
44 committed a prohibited act in violation of G.S. 58-89A-170, and such decision becomes

1 final following the conclusion of all administrative or judicial proceedings, the  
2 Commissioner may charge an applicant or licensee reasonable fees to recover the  
3 Department's costs associated with investigations, inspections, examinations, and any  
4 other administrative or enforcement responsibilities created under this Article.

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

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

9 "**§ 58-89A-75. Limited license. De minimis registration.**

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

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

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

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

- 37 (1) The name of the professional employer organization, the address of its  
38 principal office, the name of the contact person, and the taxpayer or  
39 employer identification number;
- 40 (2) A list by jurisdiction of each name under which the registrant has  
41 operated in the preceding five years, including any alternative names,  
42 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.** Effective March 31, 2005, Section 3 of S.L. 2004-162 reads as  
4 rewritten:

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

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

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

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

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

43 **SECTION 7.** G.S. 58-6-25(d) is amended by adding a new subdivision to  
44 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.** Except as otherwise expressly provided in this act, this act is  
5 effective when it becomes law.