

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SENATE BILL 20
RATIFIED BILL**

AN ACT TO REQUIRE LICENSURE OF PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 89 of Chapter 58 of the General Statutes is rewritten to read:

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

"§ 58-89-1. Title.

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

"§ 58-89-5. Definitions.

In this Article:

- (1) "Applicant" means a person applying for a license or a group license under this Article.
- (2) "Assigned employee" means an employee who is performing services for a client company under a contract between a licensee and a client company in which employment responsibilities are shared or allocated. "Assigned employee" does not include a temporary employee. Individuals who are directors, shareholders, partners, and managers of a client company are assigned employees to the extent the licensee and the client have agreed that those individuals are assigned employees and provided that those individuals meet the criteria of this subdivision and act as operational managers or perform reviews for the client company.
- (3) "Audited GAAP financial statement" means a financial statement that is audited by an independent certified public accountant and presented in accordance with generally accepted accounting principles.
- (4) "Client company" or "client" means a person that contracts with a licensee and is assigned employees by the licensee under that contract.
- (5) "Control", including the terms "controlling", "controlled by", and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if any natural person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by rule of the Commissioner. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control

exists in fact, notwithstanding the absence of a presumption to that effect.

- (6) "Financial responsibility" means the current and expected future condition of financial solvency sufficient to support a reasonable expectation that an applicant or licensee can successfully conduct its business without jeopardizing the interests of its assigned employees, client companies, or the public.
- (7) "Good moral character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the rights of others and for state and federal laws.
- (8) "Hazardous financial condition" has the same meaning as in G.S. 58-47-60(9).
- (9) "Licensee" means a person licensed under this Article to provide professional employer services. The term includes a professional employer organization group licensed under G.S. 58-89-35(b). Unless specifically stated otherwise in this Article, "licensee" includes persons who are licensed under this Article pursuant to alternative licensing procedures as set forth in G.S. 58-89-76.
- (10) "Managed services" means services provided by an organization that is the sole employer of employees whom it supplies to staff and manage a specific portion of a company's workforce or a specific facility within a company on an ongoing basis. The managed services organization has responsibility for ensuring the capabilities and skills of the employees it supplies or provides, for all employer functions, for supervisory responsibility over the employees, and for management accountability of the facility or function.
- (11) "PEO agreement" means a written contract by and between a client company and a professional employer organization that provides:
 - a. For the allocation and sharing between the client company and the licensee of the responsibilities of employers with respect to the assigned employees, including hiring, firing, and disciplining of employees; and
 - b. That the licensee and the client company assume the responsibilities required by this Article.
- (12) "Person" has the same meaning as in G.S. 58-1-5(9).
- (13) "Personnel placement service" means a job placement service offered through an organization that assists persons seeking employment to find a job with companies that are seeking employees. Companies that hire persons through a personnel placement service are the sole employers of the persons hired, and the personnel placement service does not have any responsibility as an employer.
- (14) "Professional employer services" means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are in fact shared by the licensee and the client company in accordance with G.S. 58-89-100, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the workforce at a client company work site or a majority of the personnel of a specialized group within that workforce consists of assigned employees of the licensee. "Professional employer services" does not include services that provide temporary employees or independent contractors, a personnel placement service, managed services, payroll services that do not involve employee staffing or leasing, the sharing of employees by commonly owned companies within the meaning of section 414(b) and (c) of the Internal Revenue

Code of 1986, as amended, or similar groups that do not meet the requirements of this subdivision.

- (15) "Professional employer organization" or "PEO" means a person that offers professional employer services and includes "staff leasing services companies", "employee leasing companies", "staff leasing companies", and "administrative employers" who offer or propose to offer professional employer services in this State.
- (16) "Professional employer organization group" or "PEO group" means a combination of professional employer organizations that operates under a group license issued under this Article or is otherwise subject to group licensure requirements under G.S. 58-89-35(b).
- (17) "Temporary employees" means persons employed under an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client's workforce in a special work situation, including:
 - a. An employee absence;
 - b. A temporary skill shortage;
 - c. A seasonal workload; or
 - d. A special assignment or project.

"§ 58-89-10. North Carolina Professional Employer Organization Advisory Council.

(a) There is created the North Carolina Professional Employer Organization Advisory Council to advise, consult with, and make recommendations to the Commissioner on the regulation of professional employer organizations, as requested by the Commissioner. The Council shall consist of 11 members as follows:

- (1) The Commissioner of Insurance or the Commissioner's designee, ex officio.
- (2) The Commissioner of Labor or the Commissioner's designee, ex officio.
- (3) The Chair of the North Carolina Industrial Commission or the Chair's designee, ex officio.
- (4) Two members appointed by the Governor, from a list of five persons recommended by the North Carolina Industrial Commission.
- (5) Two members appointed by the Governor who are not involved directly or indirectly with the professional employer services industry.
- (6) One member of the General Assembly, appointed by the General Assembly in accordance with G.S. 120-121, upon the recommendation of the President Pro Tempore of the Senate.
- (7) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, who is a representative of the professional employer services industry and who is involved with a professional employer organization that has 3,000 or more assigned employees.
- (8) One member of the General Assembly, appointed by the General Assembly in accordance with G.S. 120-121, upon the recommendation of the Speaker of the House of Representatives.
- (9) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, who is a representative of the professional employer services industry and who is involved with a professional employer organization that has less than 3,000 assigned employees.

Initial terms begin January 1, 2005.

(b) Other than the initial members of the Council and members of the Council serving ex officio, members of the Council shall serve three-year terms. Initial members of the Council shall serve staggered terms as follows:

- (1) The following initial members shall serve terms of three years:
 - a. One member appointed by the Governor from the list recommended by the North Carolina Industrial Commission.
 - b. The member of the General Assembly appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
 - c. One member appointed by the Governor who is not directly involved with the professional employer services industry.
 - d. The member appointed by the General Assembly upon the recommendation of the House of Representatives who is involved with a professional employer organization.
- (2) The following initial members shall serve terms of two years:
 - a. One member appointed by the Governor from the list recommended by the North Carolina Industrial Commission.
 - b. The member of the General Assembly appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
 - c. One member appointed by the Governor who is not directly or indirectly involved in the professional employer services industry.
 - d. The member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate who is involved with a professional employer organization.

(c) The Commissioner of Insurance shall serve as chair of the Council and shall call all meetings of the Council.

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

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

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

(g) The members of the Council shall not receive compensation or per diem for their service on the Council.

"§ 58-89-15. Rules.

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

(b) Each licensee and each person subject to licensure requirements under this Article are subject to the provisions of this Article and to the rules adopted by the Commissioner.

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

"§ 58-89-20. Interagency cooperation.

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

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

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

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

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

(d) With respect to a bid, contract, purchase order, program, or agreement entered into with the State or a political subdivision of the State, or State program or benefit otherwise available to a client company, a client company's status, certification, or qualification pursuant to the bid, contract, benefit, program, agreement, or State program shall not be affected because the client company has entered into an agreement with a licensee or utilizes the services of a licensee.

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

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

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, 58-2-100, 58-2-155, 58-2-163, 58-2-180, 58-2-185, 58-2-200, and 58-3-100 shall apply to all persons licensed under this Article and all persons subject to licensure requirements under this Article.

"§ 58-89-31. Tax credits and other incentives.

For purposes of determination of tax credits and other economic incentives provided by the State and based on employment, covered employees are considered employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client. Each professional employer organization must provide, upon request by a client, employment information that is required by any agency or department of the State responsible for administration of any tax credit or economic incentive and that is necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

"Part 2. License Requirements and Limitations.

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

(a) No person shall engage in or offer professional employer services in this State unless the person holds a license issued under this Article.

(b) Two or more professional employer organizations that are controlled by the same ultimate parent, entity, or persons may be licensed as a professional employer organization group. A professional employer organization group may satisfy the reporting and financial requirements of this Article on a consolidated basis. As a condition of licensure as a professional employer organization group, each professional employer organization that is a member of the group shall guarantee payment of all financial obligations of every other member. Notwithstanding the definition of "person" in this Article, whenever two or more entities combine to seek issuance of a single license under this Article, the requirements for group licensure under this subsection shall be met before issuance of a license and any license issued will be a group license issued pursuant to this subsection.

"§ 58-89-40. Qualifications for controlling person.

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

- (1) Operation of a professional employer organization; or
- (2) Service as a controlling person of a professional employer organization.

(b) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in G.S. 58-89-76 or to entities that are controlling persons.

"§ 58-89-45. Reserved.

"§ 58-89-50. 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 that meets the requirements of this section if 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.

(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) This section does not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in G.S. 58-89-76.

"§ 58-89-55. Reserved.

"§ 58-89-60. License application.

(a) Every applicant for licensure shall file with the Commissioner, on a form prescribed by the Commissioner, the following information:

- (1) The name, organizational structure, and date of organization of the applicant, the addresses of the principal office and of all offices in this State, the name of the contact person, the type of operations within this State, and the taxpayer or employer identification number.
- (2) A list by jurisdiction of each name under which the applicant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, names of successor business entities. The list required by this subdivision shall include the parent company name and any trade name, trademark, or service mark of the applicant.
- (3) A list of all officers and controlling persons of the applicant, their biographical information, including their management background, and an affidavit from each attesting to his or her good moral character and management competence.
- (4) The location of the business records of the applicant.
- (5) An attestation, executed by the chief financial officer and chief executive officer of the applicant, that the applicant is current as of the date the application is submitted with respect to all of its obligations for payroll, payroll-related taxes, workers' compensation insurance, and employee benefits. If any such obligations are in dispute with a client as of the date the application is submitted and the disputed

amount is material when considered in the context of the applicant's most recent audited financial statement, then the applicant shall disclose the nature of the dispute causing the obligations to be unpaid and the amount of money in controversy.

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

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

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

(c) Every applicant shall submit to the Commissioner the application fee pursuant to G.S. 58-89-65.

(d) Every applicant shall furnish the Commissioner a complete set of fingerprints and a recent photograph in a form prescribed by the Commissioner of each officer, director, and controlling person. Each set of fingerprints shall be certified by an authorized law enforcement officer.

Upon request by the Department, the Department of Justice shall provide to the Department from the State and National Repositories of Criminal Histories the criminal history of any applicant and the officer, director, and controlling person of any applicant. Along with the request, the Department shall provide to the Department of Justice the fingerprints of the person that is the subject of the request, a form signed by the person that is the subject of the request consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation may forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Department shall keep all information obtained pursuant to this subsection confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

In the event that an applicant has secured a professional employer organization license in another state in which the professional employer organization's controlling persons have completed a criminal background investigation within 12 months of this application, a certified copy of the report from the appropriate authority of that state may satisfy the requirement of this subsection. This subsection also applies to a change in a controlling party of a professional employer organization. For purposes of investigation under this subsection, the Commissioner shall have all the power conferred by G.S. 58-2-50 and other applicable provisions of this Chapter.

(e) An application for licensure of a professional employer organization group shall contain the information and submissions required by this section for each member of the group.

(f) No application is complete until the Commissioner has received all information and submissions required under subsections (a) through (e) of this section. Subsections (a) through (e) of this section do not apply to persons who are licensed pursuant to the alternative licensing procedures set forth in G.S. 58-89-76.

(g) The Commissioner may deny the license of an applicant under this Article if, after notice to the applicant and an opportunity for a hearing, the Commissioner finds that a controlling person has:

- (1) Made any untrue material statement regarding the background or experience of any controlling person;
- (2) Violated, or failed to comply with, any professional employer services law or any rule or order of the Commissioner or of any other State official responsible for the regulation of professional employer services;
- (3) Obtained or attempted to obtain the license through misrepresentation or fraud;
- (4) Been convicted of a felony;
- (5) Been found in a final judgment or administrative proceeding to have committed fraud or an unfair trade practice; or
- (6) Been a controlling person in another professional employer organization that has had its license or registration suspended, terminated, or revoked by any state.

(h) If the Commissioner finds that the applicant has not fully met the requirements for licensure, the Commissioner shall refuse to issue the license and shall notify the applicant in writing of the denial, stating the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or terminated under G.S. 58-89-155. To obtain a review to determine the reasonableness of the Commissioner's denial, the applicant shall make written demand upon the Commissioner within 30 days after notice is given under G.S. 150B-38(c). The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. If the applicant disagrees with the outcome of the review and seeks a hearing, under Article 3A of Chapter 150B of the General Statutes, on the outcome of the review, the applicant shall make a written demand upon the Commissioner for the hearing within 30 days after notice of the outcome of the review is given under G.S. 150B-38(c).

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

(j) The Commissioner may, in the Commissioner's discretion, waive the required evaluation of an officer, director or controlling person if that officer, director or controlling person has been evaluated previously under this Article.

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

- (1) The extent to which the applicant or licensee has adequately corrected any problems; and
- (2) Whether the applicant or licensee has demonstrated that the applicant or licensee had exercised due diligence to avoid the reason or reasons for the denial or termination.

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

"§ 58-89-65. Fees.

(a) Each applicant for a professional employer organization license or limited professional employer organization license 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. 58-89-70(d) an annual filing fee of one thousand dollars (\$1,000).

(c) Each applicant for alternative licensing under G.S. 58-89-76 and each applicant for renewal of a license provided under G.S. 58-89-76 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. 58-89-155 or that a licensee has committed a prohibited act in violation of G.S. 58-89-170, 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.

"§ 58-89-70. License issuance and maintenance.

(a) The Commissioner shall issue a license to an applicant whom the Commissioner determines has satisfied the requirements of this Article not later than the 90th day after the date on which the completed application is filed with the Commissioner. The Commissioner shall notify an applicant of any deficiency in the application not later than the 60th day after the date on which the Commissioner receives the application.

(b) A license issued by the Commissioner under this Article shall remain in effect until revoked, suspended, surrendered, or otherwise terminated.

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

(d) Within 120 days after the end of each fiscal year, each licensee shall file with the Commissioner all of the following information:

- (1) Evidence of "financial responsibility" as set forth in G.S. 58-89-60(b).
- (2) Any information required by G.S. 58-89-60(a) for which there has been a change since the last or initial filing. Any change of controlling persons may subject the licensee to a background investigation of those controlling persons as required by G.S. 58-89-60.
- (3) The annual filing fee, pursuant to G.S. 58-89-65.
- (4) Any other information the Commissioner determines is needed for the review of a licensee.

(e) In order to maintain licensure, each licensee may be required to file with the Commissioner no later than 45 days after the end of each quarter of the fiscal year:

- (1) A financial statement for the preceding quarter that is not audited but is set forth in a format similar to the annual audited GAAP financial statement; and
- (2) An attestation, executed by the chief financial officer and the chief executive officer of the licensee, that the licensee is current with respect to all of its obligations for payroll, payroll-related taxes, workers' compensation insurance, and employee benefits. If any of the obligations listed in this subdivision are in dispute with a client and the disputed amount is material when considered in the context of the licensee's most recent audited financial statement, then the licensee shall disclose the nature of the dispute causing the obligations to be unpaid and the amount of money in controversy.

"§ 58-89-75. Limited license.

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.

"§ 58-89-76. Alternative licensing.

The Commissioner, by rule, may provide for the acceptance of an affidavit by a bonded, independent, and qualified assurance organization that has been approved by the Commissioner certifying the qualifications of a professional employer organization for licensing under this Article in lieu of the requirements of G.S. 58-89-40 through G.S. 58-89-60. A professional employer organization licensed under this section shall be exempt from the provisions of G.S. 58-89-70(c), (d), and (e).

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

(a) A licensee shall not conduct business under any name other than that specified in the license. A license issued under this Article is not assignable. A licensee shall not conduct business under any fictitious or assumed name without prior written authorization from the Commissioner. The Commissioner shall not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by the name's use. A licensee shall not conduct business under more than one name unless the licensee has obtained a separate license for each name or the licensee is operating under a group license pursuant to G.S. 58-89-35.

(b) Except as provided in this subsection, a licensee may change the licensee's licensed name only once in a calendar year by notifying the Commissioner and paying a fee for the change of name. The fee for a name change shall be fifty dollars (\$50.00). A licensee may change the licensee's name without the payment of the name change fee if the name change is submitted with the information required by G.S. 58-89-70(d). If a licensee has changed its name once during a calendar year, the licensee shall not change its name again unless the name change is approved by the Commissioner.

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

- (1) Any change in the location of the licensee's primary business office;
- (2) The addition of or change in the location of any other business offices providing professional employer services in this State; and
- (3) A change in the location of business records maintained by the licensee.

(d) A licensee may advertise in this State using only the name that is on the license issued by the Commissioner.

(e) Each written proposal provided to a prospective client company and each PEO agreement between a licensee and a client company or assigned employee shall clearly identify the name of the licensee.

"§ 58-89-85. Supervision; rehabilitation; liquidation.

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

"§ 58-89-90. Reserved.

"Part 3. Licensee Duties and Responsibilities.

"§ 58-89-95. Agreement; notice.

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

(b) The licensee shall give written notice of the agreement, by agreement or otherwise, as it affects assigned employees to each employee assigned to a client

company work site. This written notice shall be given to each assigned employee not later than the first payday after the date on which that individual becomes an assigned employee.

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

"§ 58-89-100. Contract requirements.

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

- (1) That the licensee reserves a right of direction and control over employees assigned to a client company's work sites. However, a client company may retain such sufficient direction and control over the assigned employees as is necessary to conduct the client company's business and without which the client company would be unable to conduct its business, to discharge any fiduciary responsibility that it may have, or to comply with any applicable licensure, regulatory, or statutory requirement of the client company. The PEO agreement shall provide that employment responsibilities not allocated to the licensee by the PEO agreement or this section remain with the client company.
- (2) That the licensee assumes responsibility for the payment of wages to the assigned employees as agreed to in the PEO agreement.
- (3) That the licensee assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees.
- (4) That the licensee reserves a right to hire, fire, and discipline the assigned employees.
- (5) That the licensee retains a right of direction and control over the adoption of employment policies and the management of workers' compensation claims, claim filings, and related procedures in accordance with applicable federal laws and the laws of this State.
- (6) That responsibility to obtain workers' compensation coverage for assigned employees, from an entity authorized to do business in this State and otherwise in compliance with all applicable requirements, shall be specifically allocated in the PEO agreement to either the client company or the licensee. If the responsibility is allocated to the licensee under any such agreement, that agreement shall require that the licensee maintain and provide to the client company, at the termination of the agreement if requested by the client company, records regarding the loss experience related to workers' compensation insurance provided to assigned employees pursuant to the agreement.

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

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees.

(b) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.

(c) If a licensee offers to its assigned employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:

- (1) Utilize a third-party administrator licensed or registered to do business in this State;
- (2) Hold all plan assets, including participant contributions, in a trust account; and
- (3) Provide sound reserves for the plan as determined using generally accepted actuarial standards.

(d) For purposes of this section, a "health benefit plan that is not fully insured by an authorized insurer" includes any arrangement except an arrangement under which an insurance company licensed to write insurance in this State has issued an insurance policy that covers all of the obligations of the health benefit plan.

"§ 58-89-110. Workers' compensation insurance.

(a) A licensee or the licensee's client company shall provide workers' compensation insurance coverage through a licensed insurance carrier or a licensed self-insurance plan for the licensee's assigned employees as provided in Chapter 97 of the General Statutes, the Workers' Compensation Act. To the extent that the licensee secures and maintains workers' compensation coverage for assigned employees, the carrier may elect to provide such coverage to the licensee pursuant to either the multiple coordinated policy method, as set forth in subsection (b) of this section, or the single policy method, as set forth in subsection (c) of this section.

(b) If the licensee provides workers' compensation coverage pursuant to the multiple coordinated policy method, the licensee shall secure a separate policy for each client company of the licensee. Each policy shall identify the name of the client company and the licensee. The licensee shall be named as the insured and identify the client company. The licensee shall specify that it is the labor contractor for the client company by using the designation "L/C/F" on the policy.

Each policy shall expire on the same date. The policy shall not include coverage for nonleased employees of the client company or employees solely employed by the licensee. Only the licensee, as the first-named insured under such a policy, may request the insurer to cancel the policy. Each policy shall be sent to the licensee as the named insured.

The client company of a licensee shall have a continuing obligation to provide coverage as required by Chapter 97 of the General Statutes, the Workers' Compensation Act, for any employees of the client company who are not assigned employees and not otherwise covered under a policy described in this subsection.

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

The workers' compensation carrier also shall issue a policy covering the internal employees of the licensee unless they are otherwise covered.

All policies written in accordance with this subsection by the same insurance carrier that reference the same licensee as labor contractor shall be combined for premium discount purposes.

When policies written in accordance with this subsection are written by the same insurance carrier, the carrier and licensee may agree to a retrospective rating program or any other permitted pricing program.

Whenever a policy written in accordance with this subsection is cancelled, the insurance company writing the policy shall provide individual notices of cancellation as required by this Chapter to the licensee and the client company of the licensee.

(c) If the licensee provides workers' compensation coverage pursuant to the single policy method, the insurer shall issue to the licensee a single policy covering all assigned employees in this State in accordance with Chapter 97 of the General Statutes, the Workers' Compensation Act, and any other applicable laws or rating plans of this State.

As a condition of issuing a single policy, the licensee shall provide to the insurer of the policy all of the following information regarding each client company of the licensee with assigned employees in this State:

- (1) The correct legal name, any fictitious names, and the federal identification number.
- (2) The name and address of the president and chief executive officer.
- (3) The business mailing address.
- (4) The business telephone number and facsimile number.

The licensee shall also provide to the insurer the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.

The insurer shall issue to each client company of the licensee a certificate of insurance on the single policy. The certificate of insurance shall require that the insurer provide notice of cancellation to the licensee and the client company of the licensee.

Whenever a policy written in accordance with this subsection is cancelled, the insurance company writing the policy shall provide individual notices of cancellation as required by this Chapter to the licensee and the client company of the licensee.

If the insurer fails to provide individual notices of cancellation to the licensee and the client company, the insurer shall remain liable on the risk for losses incurred by the client company that would have been covered by the workers' compensation policy prior to the attempted cancellation.

(d) A license shall not be issued to any professional employer organization unless 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 commensurate with exposure and anticipated claim experience for all employees covered under policies in the name of the licensee.

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

- (1) The correct name and federal identification number of each client company.
- (2) A listing of all covered employees provided to each client company, by classification code.
- (3) The total eligible wages, by classification code, and the premiums due to the carrier for the employees provided to each client company.
- (4) Sufficient information to permit the calculation of an experience modification factor for each client company upon termination of the professional employer relationship. Information accruing during the term of the leasing arrangement that is used to calculate an experience modification factor for a client company upon termination of the leasing relationship shall continue to be used in the future experience ratings of the licensee.

(f) Every Form 19 "Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission" filed with the Industrial Commission shall identify by name and address both the licensee and the client company employing the employee who is the subject of the Form 19.

(g) A licensee shall, within 30 days of initiation or termination of the licensee's relationship with any client company, notify its workers' compensation carrier, the Commissioner, and the North Carolina Industrial Commission of both the initiation and termination of the relationship. If the client company terminates the relationship between the licensee and the client company, the notice required by this subsection shall be given within 10 days of the licensee's actual knowledge of the termination.

(h) If the professional employer services arrangement with a client company is terminated, the client company shall be assigned an experience modification factor that reflects its experience during the experience period specified by the approved experience rating plan, including, if applicable, experience incurred for assigned employees under the PEO agreement.

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

(j) This section shall not prevent a client company of a licensee from providing workers' compensation insurance coverage for assigned employees coemployed by the

client company and the licensee through a policy of insurance issued by a licensed insurance carrier in the name of the client company as the insured.

(k) Irrespective of whether the licensee or client company maintains the policy of workers' compensation insurance for the covered employees pursuant to the PEO agreement, the licensee and the client company shall be entitled to the exclusivity of the remedy under both the workers' compensation and the employer liability provision of the workers' compensation policy or plan that either party has secured and shall both be afforded the protections provided under Chapter 97 of the General Statutes. The licensee shall be entitled, along with the client company, to the exclusivity of the remedy under both the workers' compensation and employers' liability provision of the workers' compensation policy or plan that either party has secured.

(l) All assigned risk policies for client companies of the same licensee shall be assigned to one workers' compensation carrier in the State and in other states to the extent possible.

"§ 58-89-112. Liabilities.

Subject to any contrary provisions thereof, the PEO agreement shall be interpreted for purposes of insurance, bonding, and employer's liability as follows:

(1) A licensee is not liable for the acts, errors, or omissions of a client company or of any assigned employee or for the quality, adequacy, or safety of the goods or services produced or sold in the client company's business. A client company is not liable for the acts, errors, or omissions of a licensee or of any employee of a licensee. Nothing in this section limits any contractual liability between a licensee and the client company or limits any liability or responsibility under this Article.

(2) Employees assigned to a client company by a licensee are the employees of the client company for the purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client company unless the employees are included by specific reference in the applicable PEO agreement, insurance contract, or bond.

"§ 58-89-115. Benefit plan notice.

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

(1) The type of coverage.

(2) The identity of each insurer for each type of coverage.

(3) The amount of benefits provided for each type of coverage and to whom or on whose behalf benefits are to be paid.

(4) The policy limits on each insurance policy.

(5) Whether the coverage is fully insured, partially insured, or fully self-funded.

(b) With respect to any insurance or benefit plan provided by a licensee for the benefit of its assigned employees, a licensee shall provide to the insurer the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.

(c) Whenever any insurance policy or benefit plan is cancelled, the insurance company writing the policy shall provide a notice of cancellation as required by this Chapter.

(d) The licensee shall notify the client company and the Commissioner in writing about a discontinuance and replacement, if any, of any health plan or workers' compensation insurance coverage no later than 10 business days after the discontinuance.

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

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

A licensee is the employer of an assigned employee for purposes of Chapters 95, 96 and 105 of the General Statutes. Nothing in this section shall otherwise affect the levy and collection of unemployment insurance contributions or the assignment of discrete employer numbers pursuant to G.S. 96-9(c)(4) and the definitions set forth in G.S. 96-8(4), 96-8(5), and 96-8(6). The Employment Security Commission shall cooperate with the Commissioner in the investigation of applicants and licensees and shall provide the Commissioner with access to all relevant records and data in the custody of the Employment Security Commission.

"§ 58-89-125. Posting requirements.

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

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

"§ 58-89-130. Contractual duties.

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

- (1) Insurance premiums.
- (2) Benefit and welfare plans.
- (3) Other employee withholding.
- (4) Any other expressed responsibility that is within the scope of the PEO agreement and that fulfills the duties imposed under this Article.

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

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

"§ 58-89-140. Required information.

Each licensee shall:

- (1) Maintain adequate books and records regarding the licensee's duties and responsibilities, including accounting and employment records relating to all PEO agreement activities, for a minimum of three years.
- (2) Maintain and make available at all times to the Commissioner the following information, which shall be treated as proprietary and confidential and which is exempt from disclosure to persons other than other governmental agencies that have a reasonable, legitimate purpose for obtaining the information:
 - a. The correct name, address, and telephone number of each client company.
 - b. Each client company contract or PEO agreement.
 - c. A listing of each client company by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget.

"§ 58-89-145. Examinations.

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

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

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

(d) When making an examination under this Article, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public

accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

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

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

"Part 4. Penalties and Sanctions.

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

(a) The Commissioner may take disciplinary action against a licensee or any person subject to licensure requirements under this Article on any of the following grounds:

- (1) Being convicted or having an officer or controlling person of the licensee convicted of:
 - a. Bribery, fraud, or intentional or material misrepresentation in obtaining or attempting to obtain a license;
 - b. A crime that relates to the operation of a professional employer organization or the ability of the licensee or any officer or controlling person of the licensee to operate a professional employer organization;
 - c. A crime that relates to the classification, misclassification, or underreporting of employees required by State law;
 - d. A crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance;
 - e. A crime that relates to fraud, deceit, or misconduct in the operation of a professional employer service; or
 - f. A crime that involves dishonesty or breach of trust.
- (2) Engaging in professional employer services or offering to engage in the provision of professional employer services without a license.
- (3) Failure to provide notice in writing of the discontinuance and replacement, if any, of any insurance coverage, to the Commissioner and client company within 10 business days of the discontinuance of any insurance coverage pursuant to G.S. 58-89-115.
- (4) Failure to provide the notice required by G.S. 58-50-40.
- (5) Failure to satisfy any of the requirements for licensure in this Article.

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

"§ 58-89-160. Sanctions.

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

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

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

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

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

(b) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and desist order upon a person that violates any provision of this Article, any rule or order

adopted by the Commissioner, or any written agreement entered into with the Commissioner. The cease and desist order may be subject to judicial review under G.S. 58-63-35.

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

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

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

"§ 58-89-170. Prohibited acts.

No person shall do any of the following:

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

"§ 58-89-175. Criminal penalty.

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

"§ 58-89-180. Application to unlicensed professional employer organizations.

Notwithstanding any other provision of law, each provision in this Article applies to persons subject to licensure under this Article, whether licensed under this Article or not."

SECTION 2. The Department of Insurance shall report to the 2005 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 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 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. If the application for licensure is denied, the person shall cease offering professional employer services in this State. 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 shall not engage in or offer professional employer services in this State until the person has been issued a license under this act.

SECTION 4. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the

validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 5. This act becomes effective January 1, 2005, and applies to any contracts entered into, any business conducted, and any actions taken on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2004.

Beverly E. Perdue
President of the Senate

Richard T. Morgan
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2004