

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 385

Short Title: Payroll Processor Surety Bonds. (Public)

Sponsors: Senator Curtis (Primary Sponsor).

Referred to: Rules and Operations of the Senate.

March 25, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT PAYROLL PROCESSORS DOING BUSINESS IN THIS
3 STATE OBTAIN AND MAINTAIN A SURETY BOND OR A POLICY OF
4 CONTRACTUAL LIABILITY INSURANCE AND TO AUTHORIZE THE
5 COMMISSIONER OF INSURANCE TO SET THE AMOUNT OF SURETY BONDING
6 REQUIRED AND TO REGULATE THE CONTRACTUAL LIABILITY INSURANCE
7 OPTION.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Chapter 58 of the General Statutes is amended by adding a new
10 Article to read:

11 "Article 89B.

12 "Regulation of Payroll Processors.

13 "**§ 58-89B-1. Definitions.**

14 The following definitions apply in this Article:

- 15 (1) Employer. – A person who maintains an office or otherwise transacts
16 business in this State and pays wages taxable under Chapter 105 of the
17 General Statutes to a resident or nonresident individual.
- 18 (2) Payroll processor or processor. – A person who provides all of the following
19 services to an employer:
- 20 a. Prepares and issues payroll checks or payroll direct deposits.
- 21 b. Prepares and files state and federal income withholding taxes reports
22 and unemployment insurance contribution reports.
- 23 c. Collects, holds, and turns over to the states income withholding taxes
24 or unemployment insurance contributions or to the federal
25 government income taxes and withholdings. A person who does not
26 have the authority to access, control, direct, transfer, or disburse an
27 employer's funds is not a payroll processor as defined by this
28 subdivision.

29 "**§ 58-89B-2. Payroll processor surety bond requirement.**

30 (a) Every payroll processor doing business in this State shall obtain a bond to provide
31 security that the payroll processor will operate according to the applicable laws and pay the
32 taxes payable to the State and to the federal government for the employers they service.

33 (b) The Commissioner shall determine the amount of the surety bond required of
34 payroll processors doing business in this State. Each bond required by the Commissioner shall
35 be set in an amount that is based upon the volume of a payroll processor's business and shall
36 not exceed the lowest amount required to protect the public.



1 (c) The bond must designate the Commissioner or the Commissioner's designee as
2 payee. The bond may be used for the purposes of the Commissioner under this Article and for
3 the benefit of any employer who may have a cause of action against the payroll processor. The
4 terms of the bond must run continuously until cancelled and the aggregate amount of the bond
5 must be maintained at all times that the processor does business in this State.

6 (d) In conjunction with establishing the required bonding amount and enforcing the
7 provisions of this Article, the Commissioner shall establish a program of periodic review of the
8 amount of surety bonding required and regular examinations of payroll processors subject to
9 this Article.

10 (e) The Commissioner shall adopt rules to effectuate this surety bond requirement. At a
11 minimum, the rules shall require or provide for the following:

12 (1) Amount of Surety Bond. – The Commissioner shall determine the amount of
13 the surety bond to be posted by each payroll processor based upon the
14 volume of business each processor is doing in this State.

15 (2) Proof of Surety Bond. – A person desiring to engage or continue in business
16 in this State as a payroll processor shall file proof that the surety bond
17 required by this section is in full force and effect. The proof must be in a
18 form prescribed by the Commissioner. The Commissioner may refuse the
19 proof of security bond if it contains erroneous or incomplete information.

20 (3) Notification of Changes. – A bonding company that issues surety bonds to
21 payroll processors shall report to the Commissioner regarding all changes to
22 each surety bond that would affect payment of the bond.

23 **"§ 58-89B-3. Insurance policy requirements.**

24 (a) In lieu of the surety bond required by G.S. 58-89B-2, each payroll processor subject
25 to this Part shall maintain contractual liability insurance with an authorized insurer for one
26 hundred percent (100%) of the volume of the payroll processor's business.

27 (b) All forms relating to insurance policies written by authorized insurers under this
28 section shall be filed with and approved by the Commissioner before they may be used for any
29 purpose in this State, irrespective of whether the insurers are licensed insurers.

30 (c) Each policy shall contain the following provisions:

31 (1) If the company or person does not fulfill its obligations under this Part for
32 any reason, including federal bankruptcy or state receivership proceedings,
33 the insurer will pay losses directly to any employer making the claim under
34 the payroll processing contract.

35 (2) The insurer shall assume full responsibility for the administration of claims
36 if the payroll processor is unable to do so.

37 (3) The policy is subject to the cancellation, nonrenewal, and renewal provisions
38 of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.

39 (4) The policy shall insure all payroll processing contracts that were entered into
40 while the policy was in effect, regardless of whether the premium was
41 remitted to the insurer.

42 (d) The Commissioner may adopt rules, in addition to the requirements of this section,
43 governing the terms and conditions of policy forms for the insurance required under this
44 section.

45 **"§ 59-89B-4. Maintenance of records and examinations.**

46 (a) A payroll processor shall maintain records of its payroll processing service activity
47 in conformity with generally accepted accounting principles and practices and in a manner that
48 will enable the Commissioner to determine whether the payroll processor is complying with the
49 provisions of this Article. All records relating to payroll processing services must be
50 maintained for at least six years from the end of the fiscal year in which the activity took place.

1 **(b)** The Commissioner may conduct an examination of a payroll processor as often as
2 the Commissioner considers appropriate. An examination under this Article may be conducted
3 in accordance with the Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-134,
4 or in accordance with this section.

5 **(c)** The Commissioner may contract with consultants and other professionals to
6 expedite and complete the application process, examinations, and other regulatory activities
7 required pursuant to this Part. Such contracts for financial, legal, examination, and other
8 services shall not be subject to any of the following:

9 **(1)** G.S. 114-2.3.

10 **(2)** G.S. 147-17.

11 **(3)** Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with
12 rules and procedures adopted under those Articles concerning procurement,
13 contracting, and contract review.

14 **"§ 58-89B-5. Confidentiality; interagency cooperation; experts.**

15 **(a)** Any information furnished pursuant to this section by or to the Commissioner that
16 has been designated as confidential by the agency furnishing the information remains the
17 property of the agency furnishing the information and must be kept confidential by the recipient
18 of the information except as authorized by the furnishing agency.

19 **(b)** The Commissioner may enter into cooperative agreements with other state, federal,
20 or foreign agencies to facilitate regulatory functions, including, but not limited to, the sharing
21 between agencies of information that is otherwise confidential, coordination of examinations,
22 and joint examinations.

23 **(c)** The Commissioner may engage experts, professionals, or other personnel of other
24 state or federal regulatory agencies as may be necessary to assist the Commissioner in carrying
25 out the regulatory functions of this Article.

26 **"§ 59-89B-6. Enforcement; civil penalties; cease and desist orders.**

27 **(a)** If any person violates this Article or any rule implementing this Article, the
28 Commissioner may seek an injunction in a court of competent jurisdiction and may apply for
29 temporary and permanent orders that the Commissioner determines are necessary to restrain the
30 person from committing the violation.

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

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

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

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

46 **SECTION 2.** This act becomes effective January 1, 2016, or six months after the
47 date of ratification, whichever is sooner.