

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1029
Commerce Committee Substitute Adopted 5/4/09
House Committee Substitute Favorable 6/10/09
House Committee Substitute #2 Favorable 7/7/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1029-PCS85277-SVf-57

Short Title: PEO Amendments.

(Public)

Sponsors:

Referred to:

March 31, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER
3 ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND
4 MAINTENANCE OF EMPLOYEE BENEFITS, AND TO CLARIFY THE
5 APPLICATION OF TAX CREDITS AND OTHER INCENTIVES TO PROFESSIONAL
6 EMPLOYER ORGANIZATIONS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 58-89A-50(a) reads as rewritten:

9 "(a) An applicant for licensure shall file with the Commissioner a surety bond for the
10 benefit of the Commissioner as follows:

11 (1) If the applicant was initially licensed prior to October 1, 2008, the bond, or
12 other items as provided for in subsection (f) of this section, shall be in the
13 amount of one hundred thousand dollars (\$100,000).

14 (2) If the applicant was not initially licensed prior to October 1, 2008, the bond,
15 or other items as provided for in subsection (f) of this section, shall be in an
16 amount equal to five percent (5%) of the applicant's prior year's total North
17 Carolina wages, benefits, workers compensation premiums, and
18 unemployment compensation contributions, but not greater than five
19 hundred thousand dollars (\$500,000), or such greater amount as the
20 Commissioner may require."

21 **SECTION 2.** G.S. 58-89A-105 reads as rewritten:

22 "**§ 58-89A-105. Employee benefit plans; required disclosure; other reports.**

23 (a) A licensee may sponsor and maintain employee benefit plans for the benefit of
24 assigned employees. Any health insurance plan sponsored and maintained by a licensee shall
25 only be fully insured by one of the following:

26 (1) A licensed insurance company that is authorized to write accident and health
27 insurance, as defined in G.S. 58-7-15(3).

28 (2) A service corporation organized and licensed under Article 65 of this
29 Chapter.

30 (3) A health maintenance organization organized and licensed under Article 67
31 of this Chapter.



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1 (a1) A client company may sponsor and maintain employee benefit plans for the benefit
2 of assigned employees.

3 (b), (c) ~~Repealed by Session Laws 2008-124, s. 7.4, effective October 1, 2008.~~

4 (d) For the purposes of this section, a health insurance plan is fully insured only if all of
5 the benefits provided under the plan are covered by an approved policy issued by one or more
6 of the entities specified in subsection (a) of this section. A health insurance plan is not fully
7 insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

8 (e) Existing licensees shall comply with subsection (a) of this section by October 1,
9 2009. ~~Before~~ If on October 1, 2009, if an existing licensee sponsors and maintains any health
10 insurance plan that is not fully insured by one or more of the entities specified in subsection (a)
11 of this section, the licensee ~~shall do all of the following:~~

12 (1) ~~Use a third-party administrator licensed or registered under Article 56 of this~~
13 ~~Chapter.~~

14 (2) ~~Hold all plan assets, including participant contributions, in a trust account.~~

15 (3) ~~Provide sound reserves for the plan as determined by generally accepted~~
16 ~~actuarial standards.~~

17 may continue to sponsor and maintain the health insurance plan if it complies with
18 G.S. 58-89A-106."

19 **SECTION 3.** Article 89A of Chapter 58 of the General Statutes is amended by
20 adding the following new sections to read:

21 **"§ 58-89A-106. Health insurance plan requirements.**

22 (a) In order for a licensee to sponsor and maintain a health benefit plan that is not fully
23 insured by one or more of the entities specified in subsection (a) of G.S. 58-89A-109 on and
24 after October 1, 2009, as authorized by subsection (e) of that section, the licensee shall meet all
25 of the requirements listed in this subsection. A health benefit plan developed under this section
26 is not required to provide coverage that meets the requirements of other provisions of this
27 Chapter that mandate either coverage or the offer of coverage by the type or level of health care
28 services or health care provider. The licensee shall:

29 (1) Use a third-party administrator licensed or registered under Article 56 of this
30 Chapter.

31 (2) Hold all health insurance plan assets, including participant contributions, in a
32 separate trust account for use only with the health benefit plan.

33 (3) Provide sound reserves for the health benefit plan that are determined on an
34 annual basis by an actuary who is a member in good standing of the
35 American Academy of Actuaries. The Commissioner may establish, by rule,
36 a process for approving plan reserves.

37 (4) Maintain the health benefit plan for only employees of the licensee or
38 employees of the client company and neither offer nor advertise the health
39 insurance benefit plan to the public generally.

40 (5) Issue to each covered employee a policy, contract, certificate, summary plan
41 description, or other evidence of the benefits and coverages provided. The
42 evidence of benefits and coverages provided shall contain, in boldface print
43 in a conspicuous location, the following statement: "THE BENEFITS
44 UNDER THIS PLAN MAY NOT BE EQUAL TO THE MANDATED
45 BENEFITS REQUIRED OF FULLY INSURED PLANS. THE BENEFITS
46 AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH
47 A SELF-FUNDED HEALTH BENEFIT PLAN ESTABLISHED BY [name
48 of PEO]. EXCESS INSURANCE IS PROVIDED BY AN AUTHORIZED
49 INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL
50 CLAIMS. THE HEALTH BENEFIT PLAN IS NOT PROTECTED BY
51 ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED

1 FINANCIAL INFORMATION IS AVAILABLE FROM YOUR
2 EMPLOYER OR FROM THE [name of PEO]." Any statement required by
3 this subsection is not required on identification cards issued to covered
4 employees or other insureds.

5 (6) File all contracts with third-party administrators with the Commissioner and
6 report any changes to those contracts to the Commissioner before their
7 implementation.

8 (7) Obtain and maintain stop-loss insurance from an insurer authorized to write
9 insurance in this State and that meets the following requirements:

10 a. If individual stop-loss insurance, it is actuarially appropriate for the
11 size of the group, surplus, and the expected losses, as determined by
12 a qualified actuary and approved by the Commissioner.

13 b. If aggregate stop-loss insurance, it is actuarially appropriate for the
14 size of the group, surplus, and the expected losses as determined by a
15 qualified actuary and approved by the Commissioner. If the licensee
16 is unable to obtain aggregate stop-loss insurance that is actuarially
17 appropriate, the licensee shall maintain at least a thirty percent (30%)
18 lag reserve above expected losses, as determined by a qualified
19 actuary.

20 c. If prescribed by the Commissioner, by rule, it satisfies net retention
21 levels in accordance with a PEO's surplus and expected claims.

22 (8) File with the Commissioner for information the summary plan description
23 and the evidence of the benefits and coverages provided under the health
24 benefit plan that is issued to the person covered by the health benefit plan.

25 (9) Establish and maintain a written plan of operation for the health benefit plan.

26 (10) File with the Commissioner the plan of operation for the health benefit plan
27 and any updates to the plan of operation within 30 days of implementation.

28 (11) Upon request of the Commissioner, provide information that summarizes
29 paid and incurred expenses and contributions or premiums received and any
30 additional evidence that the PEO's health benefit plan is actuarially sound.

31 (b) Notwithstanding Chapter 132 of the General Statutes, all documents filed by a
32 licensee under this section are confidential, are not open for public inspection, and are not
33 discoverable or admissible in evidence in a civil action brought by a party other than the
34 Department against a person regulated by the Department, its directors, officers, or employees,
35 unless the court finds that the interests of justice require that the documents be discoverable or
36 admissible in evidence. The Commissioner, however, may use the contracts filed under this
37 subsection in the furtherance of any regulatory or legal action brought as part of the
38 Commissioner's official duties.

39 **"§ 58-89A-107. Examinations of self-funded health benefit plans.**

40 (a) The Commissioner may conduct an examination of a licensee's self-funded
41 employee benefit plan as often as the Commissioner considers appropriate.

42 (b) An examination under this Article shall be conducted in accordance with the
43 Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-133.

44 (c) In lieu of an examination of any foreign or alien licensee's self-funded employee
45 benefit plan, the Commissioner may, in the Commissioner's discretion, accept an examination
46 report on the licensee's self-funded employee benefit plan prepared by the appropriate regulator
47 for the licensee's state of domicile.

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

1 (e) The amount paid by a PEO for an examination of its health benefit plan under this
2 section shall not exceed sixty thousand dollars (\$60,000), unless the PEO and the
3 Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received
4 under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds
5 received under this section shall be used by the Department for offsetting the actual expenses
6 incurred by the Department for examinations under this section."

7 **SECTION 4.** G.S. 58-89A-31 reads as rewritten:

8 **"§ 58-89A-31. Tax credits and other incentives.**

9 For purposes of determination of tax credits and other economic incentives provided by the
10 State or a political subdivision and based on employment, covered employees are considered
11 employees solely of the client. A client shall be entitled to the benefit of any tax credit,
12 economic incentive, or other benefit arising as the result of the employment of covered
13 employees of the client. Each professional employer organization must provide, upon request
14 by a client, employment information that is required by any agency or department of the State
15 or a political subdivision responsible for administration of any tax credit or economic incentive
16 and that is necessary to support a request, claim, application, or other action by a client seeking
17 the tax credit or economic incentive. For purposes of this section, the term "political
18 subdivision" has the same meaning as in G.S. 162A-65(a)(8)."

19 **SECTION 5.** The Department of Insurance shall report to the 2010 General
20 Assembly on the implementation, administration, and enforcement of this act. In its report, the
21 Department shall recommend any statutory changes required to regulate professional employer
22 organizations and enforce the provisions of this act.

23 **SECTION 6.** This act is effective when it becomes law.