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SENATE BILL DRS15117-NE-53

Short Title: Amend NC PEO Act.-AB

(Public)

Sponsors: Senators Johnson, Britt, and Settle (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT ENACTING CHANGES TO THE NORTH CAROLINA PROFESSIONAL
EMPLOYER ORGANIZATION ACT, AS RECOMMENDED BY THE DEPARTMENT
OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-5 reads as rewritten:

"§ 58-89A-5. Definitions.

In this Article:

...

(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.

...

(17) "Tangible net worth" means the difference between total tangible assets and total liabilities. For purposes of this definition, tangible assets are physical assets and do not include goodwill, patents, copyrights, intellectual property, trademarks, and any other non-physical asset.

~~(17)~~(18) "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:

...

(19) "Working capital" means the difference between current assets and current liabilities."

SECTION 2. G.S. 58-89A-35 reads as rewritten:

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

...

(b) Two or more ~~professional employer organizations~~ persons 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 or combined basis. As a condition of licensure as a professional employer organization group, each ~~professional employer organization person~~ that is proposes to be a member of the a professional employer organization 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



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before issuance of a license and any license issued will be a professional employer organization group license issued pursuant to this subsection."

SECTION 3. G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. Surety bond; letter of credit; other deposits.

(a) An applicant for licensure shall file with the Commissioner a surety bond, or other items as set forth in subsection (f) of this section, in the amount of one hundred thousand dollars (\$100,000) for the benefit of the Commissioner. An applicant ~~whose current assets do not exceed current liabilities~~ or licensee who does not have positive working capital pursuant to G.S. 58-89A-60(b) shall file an additional surety bond or other items set forth in subsection (f) of this section equal to or in excess of ~~current liabilities less current assets.~~ the applicant's or licensee's negative working capital.

...."

SECTION 4. G.S. 58-89A-60(g) is repealed.

SECTION 5. G.S. 58-89A-60, as amended by Section 4 of this act, reads as rewritten:

"§ 58-89A-60. License application.

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

...

(3) A list of all ~~officers~~ officers, directors, and other controlling persons of the applicant, their biographical information, including their education, management background, and business experience, and an affidavit from each attesting to his or her good moral character and management competence.

...

(6) Any other reasonable 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, have applicable educational and business experience, and have financial responsibility.

(b) Every applicant shall file with the Commissioner an audited ~~GAAP~~ financial statement, prepared as of a date not more than 90-120 days before the date of application that demonstrates that the applicant ~~or licensee's current assets exceed current liabilities and attached~~ has a tangible net worth of not less than fifty thousand dollars (\$50,000) and positive working capital. The applicant shall attach to which is the audited financial statement a separate document signed by the applicant's chief executive and the chief financial officer certifying that (i) each has reviewed the audited financial statement; (ii) based on each signatory's knowledge, the audited 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 audited financial statement; and (iii) based on each signatory's knowledge, the audited financial statement fairly presents in all material respects the financial condition of the ~~licensee~~ applicant as of, and for, the period presented in the audited 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 90-120 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 audited financial statements prepared more than 90-120 days prior to submission.

The audited ~~GAAP~~ financial statement shall be prepared ~~in accordance with generally accepted accounting principles and audited~~ by an independent certified public accountant licensed to practice in the jurisdiction in which such accountant is located and shall be without qualification as to the going concern status of the ~~PEO. A PEO group applicant.~~ Persons applying for a professional employer organization group license may submit combined or consolidated

audited financial statements to meet the requirements of this section, ~~except that a PEO provided that the combined or consolidated audited financial statement include a combining or consolidating balance sheet and statement of operations of each proposed member as supplemental information to the combined or consolidated audited financial statement. An applicant that has not had sufficient operating history to have audited financial statements based upon does not have at least 12 months of operating history must may meet the financial capacity requirements of this subsection and present by filing with the Commissioner financial statements that have been reviewed by a an independent certified public accountant-accountant and that have been prepared as of a date not more than 90 days before the date of application.~~

(b1) The Commissioner may accept the audited financial statement of an applicant's parent company, if the audited financial statement includes either a combining or consolidating balance sheet, income statement, statement of changes in equity, and statement of cash flows as supplemental information to the audited financial statement, the contents of which will allow the Commissioner to determine the financial condition and financial responsibility of the applicant.

(b2) The Commissioner may accept the audited financial statement of an applicant's parent company and consider the financial condition and financial responsibility of the parent in lieu of the applicant, if all of the following requirements are satisfied:

(1) The parent executes a guaranty agreement, in a form prescribed by the Commissioner, for the guaranty of all obligations related to the applicant's current and future client companies, including its obligations for payroll, payroll-related taxes, workers' compensation insurance, and employee benefits.

(2) The applicant files with the Commissioner documentation acceptable to the Commissioner evidencing the parent's control.

(3) The applicant submits an audited financial statement that meets the requirements of subsection (b1) of this section that allows the Commissioner to determine the financial condition and financial responsibility of the parent and the applicant.

...

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

Upon request by the Department, the State Bureau of Investigation 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 State Bureau of Investigation 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 State Bureau of Investigation. The person's fingerprints shall be used by 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 State Bureau of Investigation 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~~ the officers, directors, and other

controlling ~~party persons of a~~ professional employer ~~organization, organizations and professional~~
employer organization groups licensed under this Article. 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.

...

(g1) The Commissioner may deny the license of an applicant under this Article if the
Commissioner finds any of the following:

(1) That an officer, director, or other controlling person has:

a. Not met the requirements of G.S. 58-89A-40.

b. Made any untrue material statement or omitted any material
information regarding their background or experience.

c. 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 any aspect of the applicant's
business.

d. Obtained or attempted to obtain the license through misrepresentation
or fraud.

e. Been convicted of a felony.

f. Been found in a final judgment or administrative proceeding to have
committed fraud or an unfair trade practice.

g. Been an officer, director, or other controlling person in another
professional employer organization that has had its license or
registration suspended, terminated, or revoked by any state.

(2) That the applicant is not current with respect to all of its obligations for
payroll, payroll-related taxes, workers' compensation insurance, and
employee benefits and the applicant has failed to satisfy the Commissioner as
to the reasons why.

(3) That the applicant does not possess:

a. A tangible accounting net worth of not less than fifty thousand dollars
(\$50,000).

b. Positive working capital, or in lieu of positive working capital,
substitute security as provided under G.S. 58-89A-50(a).

(4) That the applicant has not provided evidence satisfactory to the Commissioner
of financial responsibility.

(5) That the applicant has failed to satisfy the requirements of G.S. 58-89A-50.

(6) That a ground upon which the Commissioner could take disciplinary action
against a licensee or other person subject to licensure requirements pursuant
to G.S. 58-89A-155 applies to the applicant.

(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. 58-89A-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~~an officer, director, or other 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.
...."

SECTION 6. Subsections (a1), (c1), and (c2) of G.S. 58-89A-65 are repealed.

SECTION 7. G.S. 58-89A-70 reads as rewritten:

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

...

(c) By obtaining licensure under this Article, the officers, directors, and other 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. 58-89A-60(b).~~An audited financial statement of the licensee or, if allowed by the Commissioner, an audited financial statement of the licensee's parent. The audited financial statement shall be in the form required by G.S. 58-89A-60(b), (b1), or (b2), as appropriate.

...

(4) 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.

~~(4)(5)~~ Any other reasonable 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.~~attestation in the form required by subdivision (4) of subsection (d) of this section."

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

"§ 58-89A-75. De minimis registration.

(a) A person who seeks to offer limited professional employer services in this State shall be eligible for de minimis registration status upon compliance with this section and may operate as a de minimis registrant in this State upon notification pursuant to this section. A person shall satisfy the requirements for a de minimis registration only if the professional employer organization:

(1) Does not maintain a physical professional employer organization office located in this State;

- 1 (2) Is not domiciled in this State;
2 ~~(2)~~(3) Does not employ salespersons who reside or direct their sales activities in this
3 State;
4 ~~(3)~~(4) Does not employ directly or in common control with another person, as
5 defined in G.S. 58-89A-5(12), more than 50 assigned employees in this State;
6 ~~(4)~~(5) Does not advertise through any media outlet physically located in this
7 ~~State; State, provided, however, that this subdivision shall not prohibit a person~~
8 ~~from advertising through publications, trade journals, directories, radio,~~
9 ~~television, or the internet if such advertising is not expressly directed toward~~
10 ~~employers in this State.~~
11 ~~(5)~~(6) Is a licensed ~~or registered~~ professional employer organization in at least one
12 other state of the United States; and
13 ~~(6)~~(7) Is operated by and under the control of persons of good moral character.
14 A professional employer organization operating under a de minimis registration shall be subject
15 to all of the responsibilities and authority of a licensee under this Article except for
16 G.S. 58-89A-50, 58-89A-60 and 58-89A-70(c), (d), and (e).
17 "

18 **SECTION 9.** This act is effective when it becomes law and applies to applications
19 for license issuance or renewal submitted on or after that date.